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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 724

RIN 3206–AK55

Implementation of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002—Reporting & Best Practices

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to carry out the reporting and best practices requirements of Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act). The No FEAR Act requires Federal agencies to report annually on certain topics related to Federal antidiscrimination and whistleblower protection laws. The No FEAR Act also requires a comprehensive study to determine the executive branch's best practices concerning disciplinary actions against employees for conduct that is inconsistent with these laws. This rule will implement the reporting and best practices provisions of the No FEAR Act.

DATES: *Effective Date:* The rule is effective February 26, 2007.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert by telephone at (202) 606–2930; by FAX at (202) 606–2613; or by e-mail at *NoFEAR@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

The United States and its citizens are best served when the Federal workplace is free of discrimination and retaliation. In order to maintain a productive workplace that is fully engaged with the many important missions before the Government, it is essential that the rights of employees, former employees and applicants for Federal employment under antidiscrimination and whistleblower protection laws be protected and that agencies that violate these rights be held accountable. Congress has found that agencies cannot be run effectively if those agencies practice or tolerate discrimination. Furthermore, Congress has found that requiring Federal agencies to provide annual reports on discrimination, whistleblower, and retaliation cases should enable Congress to improve its oversight of compliance by agencies with laws covering these types of cases. Finally, Congress has required that the President or his designee conduct a study of discipline taken against Federal employees for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws. The results of this study are then to be used to develop advisory guidelines that Federal agencies may follow to take such disciplinary actions. Therefore, under authority delegated by the President, OPM is issuing final regulations to implement the annual reporting and best practices provisions of Title II of the Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107–174.

Introduction

On January 25, 2006, OPM published at 71 FR 4053 (2006) a proposed rule implementing the reporting and best practices provisions of the No FEAR Act and providing a 60-day comment period. On March 31, 2006, in response to requests by the No FEAR Coalition and Members of Congress, OPM at 71 FR 16246 (2006) reopened the initial comment period until May 1, 2006. OPM received 13 comments from Federal agencies or departments, 5 comments from associations/organizations/coalitions (including the No FEAR Coalition), 4 comments from unions, 92 comments from individuals, and 2 comments from Members of Congress. OPM thanks all who provided comments—each comment has been carefully considered.

Reporting Obligations

Definition of Discipline

The No Fear Act requires agencies to create annual reports on a number of items, including disciplinary actions taken for conduct that is inconsistent with Federal antidiscrimination and whistleblower protections. These reports are to be submitted to Congress, the Equal Employment Opportunity Commission (EEOC), the Attorney General, and OPM. OPM proposed at § 724.102 to define discipline for reporting purposes to include a range of actions from reprimands through adverse actions such as removals and reductions in grade. OPM also stated that it was considering expanding the range of disciplinary actions reported to include unwritten actions such as oral admonishments. OPM asked for comments on whether such additional actions should be reported.

Most commenters raised no objection to the definition of disciplinary actions as proposed, i.e., reprimands through adverse actions, but many expressed strong disagreement with the notion of expanding that definition to include unwritten actions such as oral admonishments. Many of those, including the No FEAR Coalition, were concerned that an expanded definition would undermine what they assert was the intent of Congress that stiff penalties be imposed on those who violate Federal antidiscrimination and whistleblower protection laws. Many believed that reporting such additional actions would improperly inflate the numbers of actions taken to discourage improper activities. Others felt that the reporting of non-written actions would be inconsistent with the concept of progressive discipline or would encourage agencies to take types of actions that might impinge upon the recipients' procedural rights. Federal agencies were opposed to reporting unwritten actions for primarily two reasons: (1) Oral admonishments, unwritten warnings, and similar actions are not true disciplinary actions and (2) it would be an administrative burden to report such actions because of their undocumented nature. Some thought that documentation of unwritten actions by agencies would negatively impact their ability to attempt to resolve workplace issues informally.

Commenters in favor of reporting unwritten actions such as oral admonishments generally felt that it is important for there to be a complete record of what agencies have done when they discover conduct inconsistent with Federal antidiscrimination and whistleblower protection laws. For example, one organization stated that such reporting would ''give some indication of how serious the agencies are when it comes to combating discrimination.'' One union stated that ''[t]his information is necessary to fully understand the scope of agencies' practices in this area and, particularly, whether agencies have failed to adequately discipline employees who may have committed serious breaches of the discrimination and whistleblower protection laws by imposing only minor, unwritten discipline.'' Another union in favor of reporting unwritten actions stated that extensive reporting helps ensure that there is ''an accurate and detailed portrait of any given agency's compliance with the letter and spirit of the No FEAR Act.'' One commenter recommended that the definition of discipline be further expanded to include ''reassignment from a supervisory to a non-supervisory position'' because such actions occur ''frequently'' for disciplinary reasons.

OPM received numerous comments suggesting that an expanded definition of discipline would be seen by many as an impediment to, rather than in support of, an effective Federal workforce. Moreover, expanding the definition could incorrectly suggest that OPM, through the No FEAR Act, is authorized to establish disciplinary penalties beyond the normal definition of discipline. Therefore, OPM has decided not to expand the definition of discipline to include unwritten actions such as oral admonishments or any other actions suggested by commenters. The role of OPM under the No FEAR Act is not to dictate what disciplinary actions are appropriate to be taken by agencies but rather OPM's role is to address what is to be reported under the Act.

Agency Training Plans

Section 724.302(a)(9) proposed a new reporting element that required agencies to provide copies of their written training plans developed under the earlier (February 28, 2005) proposed rule at § 724.203(a). Several commenters suggested that this element be dropped since it is not required by the No FEAR Act or suggested that the requirement be held up since § 724.203(a) was only in proposed form at the time the current regulations were proposed. Training is a critical component of obligations imposed under the No FEAR Act to ensure that the workplace is free of discrimination and reprisal. Because it is critical, OPM has decided to retain the proposed reporting element on training plans. OPM also declines to drop the proposal as premature since Subpart B (Notification and Training) along with § 724.203(a) was published as a final regulation on July 20, 2006.

One agency noted that proposed § 724.203(a) requires agencies to write training plans. Since these plans, in turn, are to be reported annually under § 724.302(a)(9), the agency asked whether it is required to resubmit the agency's written plan in each annual report even when there are no amendments to a previously reported plan. Each report should be complete and able to stand on its own independent of other reports that might have been filed by an agency. Thus, a written training plan should be submitted with each annual report by an agency.

Agency Disciplinary Policies

One commenter asked whether OPM's ''review of agencies' discussions'' under § 724.402(b) refers to future discussions that OPM will have with an agency or refers to discussions that an agency may have had internally about their disciplinary policies. OPM notes that the discussions referenced are synonymous with the ''detailed description'' of an agency's policy for taking disciplinary action under § 724.302(a)(6). Another commenter wondered whether this ''detailed description'' means that agencies would be required to develop new disciplinary policies under the regulations. While agencies may decide to develop new disciplinary policies, the regulations do not require such action. One agency stated that, with regard to the obligation to provide a detailed discussion of agency policies in § 724.302(a)(6), significant changes in agencies' reports from year to year should not be expected since agency disciplinary polices aren't often changed. OPM takes no position on this observation.

One commenter noted that the regulations refer to disciplinary actions taken for ''conduct that is inconsistent with'' Federal antidiscrimination and whistleblower protection laws. The commenter asked that OPM clarify the phrase ''conduct that is inconsistent with.'' In this regard, while agencies have the authority to take disciplinary actions against employees for misconduct, this misconduct may or may not be associated with a formal finding of a violation of Federal antidiscrimination and whistleblower protection laws. For example, a case may be settled with no admission of liability but is clearly a case where the law would be found to have been violated if there were a formal finding. Discipline taken in such a case should not go unreported under the No Fear Act. It should be noted, however, that entering into a settlement agreement should never be construed as proof of wrongdoing by either party because settlements may be reached for a variety of reasons. In sum, it is the conduct of the employee that dictates whether a disciplinary action is to be reported under the regulations, not whether there is a formal finding of a violation.

Case Reporting

As proposed, § 724.302(a)(1) would require agencies to report on cases involving Federal antidiscrimination and whistleblower protection laws that are pending or resolved in Federal courts in each fiscal year. One commenter asked whether this applies to cases in both U.S. District Court and Courts of Appeals. OPM states that it does.

One agency commented that reporting on pending cases ''does not further the purpose of the No FEAR Act'' because the number of pending cases is ''not an accurate reflection of violations'' since complaints are often filed pro se and plaintiffs often fail to accurately identify their cause of actions. The agency noted that many cases are filed under multiple statutes and causes of actions and it's difficult to understand what cases are about. As a result, the agency recommended that agencies only report an aggregate number of cases resolved in Federal court and without relating each case to provision(s) of law involved as required by the proposed rule. Another commenter suggested that the Department of Justice be tasked with obtaining the status and coverage of cases. As discussed elsewhere in the Supplementary Information, the No FEAR Act calls on agencies to discuss the status or disposition of cases in the Federal courts. The provision would be meaningless if the status of all cases reported is ''resolved.'' Therefore, OPM declines to limit agencies' reporting obligation only to cases in Federal court that have been resolved. OPM also declines to modify the reporting requirement to just reporting the aggregate number of cases in Federal court. The Act requires that each case be related to a provision(s) of law involved. OPM has no authority under the Act to task the Department of Justice as suggested by one commenter.

One agency asked that OPM define what is considered to be a ''pending case'' in Federal court. The regulations call for reporting about cases in Federal court that are pending or resolved in each fiscal year. That is, if a case is filed in court during a current reporting cycle's fiscal year or resolved during that fiscal year or filed and resolved in that fiscal year, it is to be reported. Cases filed in previous years but not resolved would be counted as (pending) cases in the current reporting year. Cases filed in previous years and resolved in the current year would be counted as (resolved) cases. Some cases may be pending for a number of years in Federal court.

Section 724.302(a)(5) requires that agencies report the number of employees disciplined in accordance with any agency policy described in § 724.302(a)(5) regardless of whether it was in connection with a case in the Federal courts. One commenter wondered why administrative cases are covered in this reporting element when other reporting elements only apply to cases in the Federal courts. OPM believes that the No FEAR Act at section 203(a)(6)(B) asks, without restriction, for reports on all discipline in connection with Federal antidiscrimination and whistleblower protections laws. Another commenter suggested that the phrase ''whether or not'' in § 724.302(a)(5) be deleted. OPM declines to adopt the suggestion.

Section 724.302(a)(5) also requires agencies to report on the number of employees disciplined for conduct inconsistent with Federal antidiscrimination and whistleblower protection laws, whether or not in connection with cases in Federal court, and to identify the specific nature of the disciplinary actions (e.g., reprimand, etc.). One agency asked whether former employees should be included in this reporting requirement. OPM states that any discipline taken during the reporting period for conduct inconsistent with the laws noted previously is to be reported even if the individual is no longer employed when the report is prepared.

Based on its analysis of the relationship between section 203(a)(1) and section 201(a) of Title II of the No FEAR Act, one agency concluded that the ''plain meaning'' of the Act is that agencies, under § 724.302(a)(1) of the proposed rule, are only required to report on cases in Federal court in which Judgment Fund payments have been made. OPM notes that section 203(a)(2) of the Act requires reporting on the ''status or disposition'' of cases described in section 203(a)(1) of the Act. If the only cases reported are those in which Judgment Fund payments have been made, section 203(a)(2) would be meaningless since the status or disposition of all cases would be similar. Accordingly, OPM declines to modify § 724.302(a)(1) and agencies must report on all cases in Federal court whether or not there has been Judgment Fund payment.

The same agency also suggested that the proposed rule § 724.302(a)(3) be modified so that agencies are not obligated to report on the nature of each disciplinary action and the provision of law concerned in each case, but rather report solely on the numbers of disciplinary actions taken. Here the agency cites to section 203(a)(4) of Title II of the No FEAR Act which calls for reporting disciplinary actions but does not speak to the nature of the action or the provision of law concerned. The agency also comments that the phrase ''provision of law'' is unclear and asks whether the phrase applies to the Federal antidiscrimination and whistleblower protection laws concerned or whether it refers to laws authorizing disciplinary actions (such as the law codified at 5 CFR 752 concerning adverse actions).

In response to the comment on the issue of whether the Act requires agencies to identify the nature of an action and the provision of law concerned in each case, section 203(a)(6)(B) of Title II calls for identification of the nature of the disciplinary actions reported. This reporting requirement is codified at § 724.302(a)(5). In addition, section 203(a)(1) of Title II calls for reporting on the cases arising under ''the respective provisions of law'' and that requirement is reflected in § 724.302(a)(3). The reporting requirements under both § 724.302(a)(3) and § 724.302(a)(5) should be consistent with regard to labeling discipline in order to provide the most meaningful and useful data to Congress and others. Thus, OPM declines to modify § 724.302(a)(3).

In response to another agency's question about reporting disciplinary actions, agencies are required to associate the nature of a disciplinary action with each case in such a manner that the report will list the types of disciplinary actions taken and then state the numbers of employees affected by each particular type of action.

With regard to the issue of what the phrase ''provision of law'' means, it means the Federal antidiscrimination or whistleblower protection laws involved in a particular case wherever that phrase is used in § 724.302. Another agency asked how specific an agency must be when it relates individual cases to these laws, e.g., whether the agency needs to cite laws such as the Civil Rights Act, Age Discrimination in Employment Act, etc. or whether it can just broadly refer to antidiscrimination laws or whistleblower protection laws. The No FEAR Act requires specificity and thus agencies need to identify the specific laws involved such as those cited in the commenter's question.

One agency commented on OPM's proposed §§ 724.301 and 724.302(a)(1) stating that they should contain the same language as that proposed in § 724.202(a) on February 28, 2005. That section calls on agencies to give notice to employees about Antidiscrimination Laws and Whistleblower Protection Laws applicable to them. OPM agrees the regulation should be consistent and has modified §§ 724.301 and 724.302(a)(1) to include the phrase ''applicable to them'' to modify Antidiscrimination Laws and Whistleblower Protection Laws.

One organization suggested that administrative cases also should be reported by agencies under the regulations. In this regard, the commenter noted that the regulations ignore the ''thousands of cases which are processed administratively through the MSPB [Merit Systems Protection Board] and the EEOC.'' The commenter stated that, to be truly reflective of both the magnitude of these cases and whether an agency is disciplining employees who are found liable in forums other than courts, those cases must be reported. The commenter also recommends that all settlement agreements be reported regardless of any no fault clauses. With regard to reporting administrative cases, OPM notes that, apart from the data required pursuant to section 203(a)(5), Title II of the No FEAR Act is very clear that the cases to be reported are those that have gone to Federal courts. Under Title III of the Act, the EEOC already collects information regarding administrative cases within its jurisdiction. These regulations are consistent with the requirements of the Act and the suggestion is not adopted.

With regard to settlements, OPM notes that agencies are required to report on all cases that have gone to Federal court. Some of these cases may result in settlement agreements and they must be reported. OPM takes no position on the same commenter's proposal regarding EEOC's administrative judges' salaries because the comment is beyond the scope of these regulations and that issue is not a part of the No FEAR Act.

One agency commented that employees in Federal courts often receive lump sum payments from the Judgment Fund that provide no information about how the payment is to be divided among the employee, attorney(s), and other recipients. As a result, it is difficult for an agency to report what attorney's fees were paid in connection with cases in court. Since agencies are required to report under the regulations on attorney's fees, the commenting agency suggested that the Department of Justice advise agencies of the payment breakdown since the Department is involved in most cases in Federal court. OPM notes that the regulation at § 724.302(a)(2)(iii) only requires the reporting of attorney's fees where they have been ''separately designated.'' If they have not been separated out in any part of the proceeding, agencies are not required to report on them.

A commenter suggested inserting for clarity the word ''calendar'' into the phrase ''each agency must report no later than 180 days'' in § 724.302(a). OPM adopts this suggestion.

Section 724.302(a)(9)(b)(5) provides that agencies are to submit their annual reports to ''Each Committee of Congress with jurisdiction relating to the agency.'' One agency commented that this provision is unclear and asked whether it is within each agency's discretion to determine which Committees have jurisdiction relating to that agency. OPM notes that, while the No FEAR Act does not elaborate on this requirement, OPM has concluded the provision covers committees with subject-matter jurisdiction over a particular agency's mission as well as other committees with oversight responsibility for a particular agency such as appropriations committees. Beyond these committees, it is left with agencies to determine what other committees, if any, have jurisdiction relating to their agencies.

Supplemental Reports

Section 724.302(b) requires agencies that submitted their annual reports before these regulations become final to ensure that their reports contain data elements 1 through 8 of paragraph (a) of that section. If the earlier reports do not cover all of those data elements as written, agencies would be obligated to submit supplemental reports. Data element 9 concerns agency training plans and agencies are only required to include it in their future reports. One agency commented that comparing earlier reports to the final rules and providing supplemental reports would be an ''unnecessary administrative burden'' on agencies. Another agency said that it would be ''overly burdensome'' for those that complied with the Act earlier in ''good faith.'' That agency strongly recommended that the final rule apply only to future reports. Because the proposed regulations on reporting closely track the provisions of the No FEAR Act itself, OPM believes that the differences between what was submitted earlier and the requirements of the regulations will be minimal. OPM commends those agencies that have taken the initiative and submitted reports based on the Act even though OPM's regulations had not been finalized. However, because differences are likely to be minimal and because OPM believes that Congress needs consistent reports from all agencies in order to see how well the Federal Government is working toward a discrimination and reprisal-free workplace, OPM declines to eliminate the supplemental reporting requirement of § 724.302(b).

Best Practices

Best Practices Study

One commenter stated that OPM ''has not gone far enough'' concerning its determination of best practices because it appears that OPM plans a ''reactive response'' based on reports developed by agencies. The commenter said that OPM should provide ''thoroughly researched, comprehensive, proactive guidelines which could help agencies avoid inappropriate discipline actions and would provide managers with sound guidance * * *.'' OPM notes the proposed rule stated only that the study ''will include,'' rather than ''will be limited to'' a review of agencies' discussions provided in their reports under the No FEAR Act.

Another commenter recommended that disciplinary best practices be shared with Federal agencies. Under § 724.403, disciplinary best practices will be incorporated in the advisory guidelines that OPM will provide to Federal agencies.

Advisory Guidelines

Some agencies suggested that OPM change the manner in which they are to reply to the advisory guidelines issued under § 724.403, eliminate the reply as an unnecessary burden, make the guidelines non-mandatory, change the recipient list, delay implementation of the guidelines after they are issued, and/or change the amount of time allocated for replying (provide more time). The No FEAR Act is very specific about agencies' obligations regarding this topic. Therefore, OPM declines to adopt these suggestions.

One agency suggested that agencies be given maximum flexibility in administering disciplinary actions and that the guidelines be focused essentially on program measures to determine effectiveness. Such program measures might be the reduction in agency complaints, policies issued to deter discriminatory behavior, and effective implementation of recommendations from previous agency reports. OPM will consider these suggestions in drafting the advisory guidelines.

One commenter suggested that OPM provide agencies with an opportunity to comment on advisory guidelines drafted under the No FEAR Act and/or publish them in the **Federal Register** for public comment. While the Act does not provide the opportunity for such comments, the President's delegation of authority to OPM does require that its activities concerning regulations under the No FEAR Act be accomplished in consultation with the Attorney General and other officers of the executive branch OPM determines appropriate. Thus, OPM has consulted with the Department of Justice, the Equal Employment Opportunity Commission, the Office of Special Counsel, and the Department of the Treasury and may do so in connection with the advisory guidelines.

With regard to agencies' obligation to state in writing whether or to what extent they are going to follow the advisory guidelines, one commenter wanted to know what will happen if an agency ''opts out''. Will there be consequences? The No FEAR Act requires agencies to provide their written statements to the Congress, the EEOC, and the Attorney General. The Act contains no ''opt out'' provision.

Miscellaneous Comments

Training

One of the union commenters recommended that there be ''mandatory training requirements'' and proposed that managers who have violated discrimination laws attend education and awareness training pertaining to managing a diverse workforce. OPM notes that the No FEAR Act requires training for all employees including managers. Agencies have flexibility to develop training curricula as appropriate for their needs. OPM declines to adopt this recommendation.

Enforcement

One organization suggested that EEOC and MSPB amend their regulations so that they could dismiss on jurisdictional grounds complaints and appeals filed by

employees who are disciplined in accordance with best practices guidance on disciplinary matters as set forth by OPM. OPM takes no position on this comment because it is beyond the scope of these regulations.

Another organization suggests that, for enforcement purposes, when there are violations of Federal antidiscrimination and whistleblower protection laws within an agency, that agency should be required to post a public notice similar to what is done when an agency is found by the Federal Labor Relations Authority to have committed an unfair labor practice. Another enforcement-related proposal would be to create a central repository of all information collected under the No FEAR Act and posted in one location on a public Web site such as EEOC's. This commenter also suggested that the regulations set penalties for failing to report as required by the Act. Another organization suggests that OPM measure agencies' performance in implementing the No FEAR Act. Part of this process would involve identifying an office at OPM with primary responsibility for assessing policy performance. Agencies would submit policy to this office and a selected group of interested employees from agencies would determine important aspects to be included in agency performance assessment. The group's results then would be used to compile a list of agency performance criteria and success indicators. OPM takes no position on these comments because they are beyond the scope of these regulations.

Timeliness

A number of commenters expressed concern about the amount of time it has taken for regulations to be promulgated under the No FEAR Act. OPM notes that with the publication of final regulations on Subpart A (Judgment Fund) on May 10, 2006, Subpart B (Notification and Training) on July 20, 2006, and the current rule, Subparts C & D (Reporting and Best Practices), 5 CFR part 724 is now complete.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

E.O. 12866, Regulatory Review

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

E.O. 13132

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 13132, it is determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

E.O. 12988, Civil Justice Reform

This regulation meets the applicable standard 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 organization and does not substantially affect the rights of 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. 801 does not apply.

List of Subjects in 5 CFR Part 724

Administrative practice and procedure, Civil rights, Claims.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending part 724, title 5, Code of Federal Regulations, as follows:

PART 724—IMPLEMENTATION OF TITLE II OF THE NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALIATION ACT OF 2002

■ 1. In § 724.102 of subpart A, add a new definition for discipline in alphabetical order to read as follows:

§ 724.102 Definitions.

* * * * *

Discipline means any one or a combination of the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

* * * * *

■ 2. In part 724, add subparts C and D to read as follows:

Subpart C—Annual Report

Sec.
724.301 Purpose and scope.
724.302 Reporting obligagations.

Subpart C—Annual Report

§ 724.301 Purpose and scope.

This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the obligation of Federal agencies to report on specific topics concerning Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them covering employees, former employees, and applicants for Federal employment.

§ 724.302 Reporting obligations.

(a) Except as provided in paragraph (b) of this section, each agency must report no later than 180 calendar days after the end of each fiscal year the following items:

(1) The number of cases in Federal court pending or resolved in each fiscal year and arising under each of the respective provisions of the Federal Antidiscrimination Laws and Whistleblower Protection Laws applicable to them as defined in § 724.102 of subpart A of this part in which an employee, former Federal employee, or applicant alleged a violation(s) of these laws, separating data by the provision(s) of law involved;

(2) In the aggregate, for the cases identified in paragraph (a)(1) of this section and separated by provision(s) of law involved:

(i) The status or disposition (including settlement);

(ii) The amount of money required to be reimbursed to the Judgment Fund by the agency for payments as defined in § 724.102 of subpart A of this part;

(iii) The amount of reimbursement to the Fund for attorney's fees where such fees have been separately designated;

(3) In connection with cases identified in paragraph (a)(1) of this section, the total number of employees in each fiscal year disciplined as defined in § 724.102 of subpart A of this part and the specific nature, e.g., reprimand, etc., of the disciplinary actions taken, separated by the provision(s) of law involved;

(4) The final year-end data about discrimination complaints for each

fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act);

(5) Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in § 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

(6) A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws;

(7) An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:

(i) An examination of trends;

(ii) Causal analysis;

(iii) Practical knowledge gained through experience; and

(iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace;

(8) For each fiscal year, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under § 724.103 of subpart A of this part; and

(9) The agency's written plan developed under § 724.203(a) of subpart B of this part to train its employees.

(b) The first report also must provide information for the data elements in paragraph (a) of this section for each of the five fiscal years preceding the fiscal year on which the first report is based to the extent that such data is available. Under the provisions of the No FEAR Act, the first report was due March 30, 2005 without regard to the status of the regulations. Thereafter, under the provisions of the No FEAR Act, agency reports are due annually on March 30th. Agencies that have submitted their reports before these regulations became final must ensure that they contain data elements 1 through 8 of paragraph (a) of this section and provide any necessary supplemental reports by April 25, 2007. Future reports must include data elements 1 through 9 of paragraph (a) of this section.

(c) Agencies must provide copies of each report to the following:

(1) Speaker of the U.S. House of Representatives;

(2) President Pro Tempore of the U.S. Senate;

(3) Committee on Governmental Affairs, U.S. Senate;

(4) Committee on Government Reform, U.S. House of Representatives;

(5) Each Committee of Congress with jurisdiction relating to the agency;

(6) Chair, Equal Employment Opportunity Commission;

(7) Attorney General; and

(8) Director, U.S. Office of Personnel Management.

Subpart D—Best Practices

Sec.
724.401 Purpose and scope.
724.402 Best practices study.
724.403 Advisory guidelines.
724.404 Agency obligations

Subpart D—Best Practices

§ 724.401 Purpose and scope.

This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the obligation of the President or his designee (OPM) to conduct a comprehensive study of best practices in the executive branch for taking disciplinary actions against employees for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws and the obligation to issue advisory guidelines for agencies to follow in taking appropriate disciplinary actions in such circumstances.

§ 724.402 Best practices study.

(a) OPM will conduct a comprehensive study in the executive branch to identify best practices for taking appropriate disciplinary actions against Federal employees for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws.

(b) The comprehensive study will include a review of agencies' discussions of their policies for taking such disciplinary actions as reported under § 724.302 of subpart C of this part.

§ 724.403 Advisory guidelines.

OPM will issue advisory guidelines to Federal agencies incorporating the best practices identified under § 724.402 that agencies may follow to take appropriate disciplinary actions against employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Laws.

§ 724.404 Agency obligations.

(a) Within 30 working days of issuance of the advisory guidelines required by § 724.403, each agency must prepare a written statement describing in detail:

(1) Whether it has adopted the guidelines and if it will fully follow the guidelines;

(2) If such agency has not adopted the guidelines, the reasons for non-adoption; and

(3) If such agency will not fully follow the guidelines, the reasons for the decision not to do so and an explanation of the extent to which the agency will not follow the guidelines.

(b) Each agency's written statement must be provided within the time limit stated in paragraph (a) of this section to the following:

(1) Speaker of the U.S. House of Representatives;

(2) President Pro Tempore of the U.S. Senate;

(3) Chair, Equal Employment Opportunity Commission;

(4) Attorney General; and

(5) Director, U.S. Office of Personnel Management.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–06–0189; FV07–916/917–1 IFR]

Nectarines and Peaches Grown in California; Revision of Regulations on Production Districts, Committee Representation, and Nomination Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the administrative rules and regulations that define production districts, allocate committee membership, and specify nomination procedures for the Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees). The committees are responsible for local administration of the Federal marketing

orders (orders) for fresh nectarines and peaches grown in California, respectively. This rule also revises the committees' mailing address. These revisions are necessary to bring the orders' administrative rules and regulations into conformance with the recently amended order provisions.

DATES: Effective January 1, 2007; comments received by February 26, 2007 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or 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 at 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: Laurel May, Marketing Specialist, 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: *Laurel.May@usda.gov;* or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; Telephone (559) 487–5901, Fax: (559) 487–5906, or E-mail: *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 Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are 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 removes or revises obsolete language in the orders' administrative rules and regulations pertaining to the alignment of production districts; the allocation of committee membership; and the nomination processes for NAC, Shipper's Advisory Committee, PCC, and Control Committee members. This rule also changes the PCC's business address by removing reference to the Control Committee in order to reflect current committee operations. These changes are needed to bring the orders' administrative rules and regulations into conformity with amendments to the orders' provisions recently approved by nectarine and peach growers. These changes were unanimously recommended by the committees at their meetings on August 31, 2006.

Production Districts and Committee Membership Allocation

Nectarine Administrative Committee

Section 916.12 of the nectarine order establishes the nectarine production districts into which the state of California has been divided. Section 916.20 establishes the size of the NAC and the allocation of NAC membership to the districts defined in § 916.12. In addition, § 916.31 provides authority for the NAC to recommend changes to district boundaries and to reapportion committee representation to reflect shifts in production within the state as necessary. The changes to district boundaries and membership reapportionment recommended by the NAC are reflected in §§ 916.105 and 916.107 of the order's administrative rules and regulations.

A final rule amending §§ 916.12 and 916.20 of the nectarine order was published in the **Federal Register** on July 21, 2006 (71 FR 41345). The amendments, which will become effective on January 1, 2007, redefine the nectarine production districts, increase the size of the NAC from eight to thirteen members, and reallocate committee membership among the new districts. On January 1, 2007, §§ 916.105 and 916.107 do not reflect the district boundaries and committee membership allocation as defined in the amended order. Therefore, the NAC recommended removing the obsolete sections when the amendments become effective. This rule removes those sections. Any subsequent changes to the production districts and reallocation of committee membership among new districts will be accomplished by notice and comment rulemaking as appropriate.

Peach Commodity Committee

Section 917.14 of the peach marketing order establishes the peach production districts into which the State of California has been divided. Section 917.20 establishes the size of the PCC and § 917.22 prescribes the allocation of PCC membership to the districts defined in § 917.14. Authority is provided in § 917.35 for the PCC to recommend changes to district boundaries and to reapportion committee representation to reflect shifts in production within the state as necessary. The changes to district boundaries and membership reapportionment recommended by the PCC are reflected in § 917.120 of the order's administrative rules and regulations.

A final rule amending §§ 917.14 and 917.22 of the peach order was published in the **Federal Register** on July 21, 2006 (71 FR 41345). The amendments, which will become effective on January 1, 2007, redefine the peach production districts and reallocate committee membership among the new districts. After January 1, 2007, § 917.120 does not reflect the district boundaries and committee membership allocation as defined in the amended order provisions. Therefore, the PCC recommended removing the obsolete section when the amendments become effective. This rule removes that section. Any subsequent changes to the

production districts and reallocation of committee membership among new districts will be accomplished by notice and comment rulemaking as appropriate.

Committee Nomination Processes

Nectarine Administrative Committee

Section 916.22 of the nectarine marketing order specifies nomination procedures for members and alternate members of the NAC. Authority is provided in § 916.30 for the NAC to recommend and adopt rules and regulations regarding the nominations procedures. Furthermore, § 916.37 establishes the nectarine Shippers' Advisory Committee and authorizes the NAC to prescribe nominations procedures for that committee. Section 916.102 was added to the order's administrative rules and regulations to provide specific details regarding the nomination meeting procedures for the NAC and the Shippers' Advisory Committee.

A final rule amending § 916.22 was published in the **Federal Register** on July 21, 2006. The amendment will allow the NAC to conduct nominations through mail balloting. The final rule also removes § 916.37 regarding the Shippers' Advisory Committee, which has not been active for over 30 years and is no longer a necessary component of the nectarine marketing program. These changes will become effective on January 1, 2007.

After January 1, 2007, § 916.102 will no longer be consistent with the amended NAC nomination process, and references to the Shippers' Advisory Committee will be obsolete. Therefore, the NAC recommended that the section be removed from the nectarine order's administrative rules and regulations. This rule removes § 916.102.

Peach Commodity Committee

Section 917.24 of the peach marketing order specifies the nomination procedures for members and alternate members of the PCC. Authority is provided in § 917.35 for the PCC to recommend and adopt rules and regulations regarding the nomination procedures. Section 917.119 was added to the order's administrative rules and regulations to provide specific details regarding the nomination meeting procedures for the PCC and the Pear Commodity Committee. Order provisions pertaining to the Pear Commodity Committee have been suspended since 1994, and the Pear Commodity Committee is not currently active.

A final rule published in the **Federal Register** on July 21, 2006, amends § 917.24 to allow the PCC to conduct nominations through mail balloting. The amendment will become effective on January 1, 2007. After that date, § 917.119, which contains language pertaining to the nomination processes for both the Peach and Pear Commodity Committees, will be inconsistent with the amendments that will allow the PCC to conduct nominations through mail balloting. Therefore, the PCC recommended revising the section to specify which language therein pertains to each commodity committee's nomination procedures. This rule revises § 917.119 to include a new paragraph that specifies which procedures apply to both the Peach and Pear Commodity Committees, and which apply only to Pears.

Committee Business Address

The Control Committee, doing business as the California Tree Fruit Agreement (CTFA), functions as the joint administrative body for the commodity committees under Part 917. The Control Committee, or CTFA, is the designated recipient of all the handlers' reports and other business communications. Section 917.110 provides the business address for the Control Committee.

The final rule published in the **Federal Register** on July 21, 2006, mentioned above, included amendments to § 917.18 that allow the duties of the Control Committee to shift to the remaining commodity committee when order provisions pertaining to one commodity committee are terminated or suspended. The provisions pertaining to the Pear Commodity Committee have been suspended since 1994. Therefore, when the amendments become effective on January 1, 2007, the duties of the Control Committee will shift to the PCC, which will continue to conduct business as the CTFA. In order to conform to the amended order provisions, the PCC recommended revising the address listed in § 917.110 by eliminating the name of the Control Committee from the CTFA's business address. This rule makes that conforming change.

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 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 150 California nectarine and peach handlers subject to regulation under the orders and about 800 growers of these fruits in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000. Small agricultural growers are defined as those having annual receipts of less than $750,000. A majority of these handlers and growers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2005 season, the committees' staff estimated that the average handler price received was $10.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 600,000 containers to have annual receipts of $6,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2005 season, the committees' staff estimates that small handlers represent approximately 86 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 10 percent of the growers in the industry could be defined as other than small entities. For the 2005 season, the committees' staff estimated the average grower price received was $5.25 per container or container equivalent for nectarines and peaches. A grower would have to produce at least 142,858 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average grower price received during the 2005 season, the committees' staff estimates that small growers represent more than 90 percent of the growers within the industry.

With an average grower price of $5.25 per container or container equivalent, and a combined packout of nectarines and peaches of approximately 38,776,500 containers, the value of the 2005 packout is estimated to be $203,576,600. Dividing this total estimated grower revenue figure by the estimated number of growers (800)

yields an estimated average revenue per grower of about $254,471 from the sales of peaches and nectarines.

Amendments to the orders were recently approved by a nectarine and peach growers. The amendments were implemented in a final rule that was published in the **Federal Register** on July 21, 2006, and most will become effective on January 1, 2007.

This rule removes or revises certain sections of the orders' administrative rules and regulations to conform to the amended order provisions.

Sections 916.105 and 916.107 of the nectarine order, and 917.120 of the peach order, which specify production district boundaries and committee membership allocations, are no longer applicable because the orders' provisions have been updated to include revised production districts and committee member apportionment. These obsolete sections are being removed. Any subsequent changes to the production districts and reallocation of committee membership among new districts will be accomplished by notice and comment rulemaking as appropriate.

Section 916.102 of the nectarine marketing order, which specifies nomination meeting procedures for the NAC and the Shippers' Advisory Committee, is being removed because the nectarine order has been amended to allow mail balloting for NAC membership, and because the Shippers' Advisory Committee has been eliminated. Section 917.119 of the peach marketing order, which specifies nomination meeting procedures for the PCC and Pear Commodity Committee, is being revised because the order provisions pertaining to the PCC have been amended to allow mail balloting. A new paragraph is being added to that section to clarify which procedures pertain to both the Peach and Pear Commodity Committees, and which pertain only to the Pear Commodity Committee.

Finally, § 917.110 of the peach marketing order is being revised by removing the Control Committee's name from the address to which industry reports and business correspondence should be addressed to conform with recent amendments to the order.

These changes are necessary to bring the orders' rules and regulations into conformance with the amended order provisions.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large handlers. 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.

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 addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested persons were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the August 31, 2006, meetings were public meetings and all entities, both large and small, were able 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 the following website: *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.

This rule invites comments on changes to the administrative rules and regulations currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, 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, upon 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 that 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 implemented as soon as possible, since amendments to the orders will be effective on January 1, 2007, and conforming changes to the administrative rules and regulations should be in place at the same time; (2) the committees met and unanimously recommended these changes at public meetings, and interested persons had the opportunity to provide input at those meetings; and (3) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.102 [Removed]

■ 2. Remove § 916.102.

§ 916.105 [Removed]

■ 3. Remove § 916.105.

§ 916.107 [Removed]

■ 4. Remove § 916.107.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.110 [Amended]

■ 5. Amend § 917.110 by removing the words ''Control Committee,'' from the address at the end of the paragraph.

■ 6. In § 917.119, redesignate paragraphs (a) through (d) as (b) through (e) and add a new paragraph (a) to read as follows:

§ 917.119 Procedure for nominating members for various Commodity Committees; meetings.

(a) The nomination procedures that appear in paragraphs (b) and (c) of this section apply to both the Peach and Pear Commodity Committees, and the voting procedures that appear in paragraphs (d) and (e) of this section apply only to the Pear Commodity Committee.

* * * * *

§ 916.120 [Removed]

■ 7. Remove § 917.120.

Dated: December 21, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–22234 Filed 12–27–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–06–0190; FV07–916/917–2 IFR]

Nectarines and Peaches Grown in California; Temporary Suspension of Provisions Regarding Continuance Referenda Under the Nectarine and Peach Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule temporarily suspends order provisions that require continuance referenda to be conducted for the nectarine and peach marketing orders during winter 2006–07. The suspensions will enable the Department of Agriculture (USDA) to postpone conducting the continuance referenda until the industry has had sufficient time to evaluate the effects of recent amendments to the marketing orders. Temporary suspension of the continuance referenda should also minimize confusion during the upcoming committee nomination period, which overlaps with the scheduled referenda period.

DATES: Effective December 29, 2006; comments must be received by January 29, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. 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: Laurel May, Marketing Order Administration Branch, F&V, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 205–2830, Fax: (202) 720–8938, or E-mail: *Laurel.May@usda.gov*; or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *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 Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The orders are 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 suspends the requirement that continuance referenda be conducted during 2006–07. 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 date of the entry of the ruling.

This action temporarily suspends the provisions in §§ 916.64(e) and 917.61(e) of the orders, which specify when continuance referenda should be conducted to determine whether growers favor continuance of the orders. Temporary suspension of the provisions for continuance referenda will provide growers with more time to evaluate the effects of recent amendments to the orders before voting on continuance of the marketing programs. Suspension of the referenda requirements will also diminish the confusion likely to occur if the referenda are held during upcoming committee nominations. These actions were unanimously recommended by the Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees) at their August 31, 2006, meetings.

Nectarines

Section 916.64(e) of the nectarine marking order currently provides that USDA shall conduct a continuance referendum between December 1 and February 15 of every fourth fiscal period since winter 1974–75 to ascertain whether continuance of the order is favored by nectarine growers. A continuance referendum is, therefore, scheduled to be conducted between December 1, 2006, and February 15, 2007. Authorization to suspend the continuance referendum requirement is provided in § 916.64(b).

The NAC recommended that the provision requiring the winter 2006–07 continuance referendum be temporarily suspended to allow the industry time to fully realize the impact of recent amendments to the marketing order. Amendments to the order were approved by nectarine growers in a referendum held in March 2006. The majority of the amendments will not be implemented until January 1, 2007. The continuance referendum cycle will resume as provided in § 916.64(e) in the period between December 1, 2010, and February 15, 2011. A referendum can be held in the interim if deemed appropriate by USDA.

Among the recent amendments to the order are revisions to the NAC's nomination procedures, which require a transition to mail balloting. Ballots for the 2007–09 term of office must be mailed to growers in January 2007. The NAC believes that receiving both the nomination ballots and the continuance referenda ballots during this transitional period would confuse growers, who would then be less likely to return any of the ballots. The committees expect

that temporary suspension of the continuance referendum will minimize confusion and maximize grower participation in both the committee nominations and the continuance referendum. After this initial transitional period, biennial committee nominations should take place earlier in the year and are not expected to overlap with scheduled continuance referendum periods.

Peaches

Section 917.61(e) of the peach marketing order currently provides that USDA shall conduct a continuance referendum between December 1 and February 15 of every fourth fiscal period since winter 1974–75 to ascertain whether continuance of the order is favored by peach growers. A continuance referendum is, therefore, scheduled to be conducted between December 1, 2006 and February 15, 2007. Authorization to suspend the continuance referendum requirement is provided in § 917.61(b).

The PCC recommended that the provision requiring the winter 2006–07 continuance referendum be temporarily suspended to allow the industry time to fully realize the impact of recent amendments to the marketing order. Amendments to the order were approved by peach growers in a referendum held in March 2006. The majority of the amendments will not be implemented until January 1, 2007. The continuance referendum cycle will resume as provided in § 917.61(e) in the period between December 1, 2010, and February 15, 2011. A referendum can be held in the interim if deemed appropriate by USDA.

Section 917.61(e) also requires that USDA conduct continuance referenda regarding the provisions of Part 917 pertaining to pears. Although the provisions pertaining to pears are currently suspended, the pear referenda are conducted concurrently with the peach and nectarine continuance referenda. In order to stay synchronized with the peach and nectarine referenda, the pear referendum will not be held during the period between December 1, 2006, and February 15, 2007. The pear continuance referendum cycle will resume as provided in § 917.61(e) in the period between December 1, 2010, and February 15, 2011. A referendum can be held in the interim if deemed appropriate by USDA.

Among the recent amendments to the order are revisions to the PCC's nomination procedures, which require a transition to mail balloting. Ballots for the 2007–09 term of office must be mailed to growers in January 2007. The PCC believes that receiving both the nomination ballots and the continuance referenda ballots during this transitional period would confuse growers, who would then be less likely to return any of the ballots. The committees expect that temporary suspension of the continuance referendum will minimize confusion and maximize grower participation in both the committee nominations and the continuance referendum. After this initial transitional period, biennial committee nominations should take place earlier in the year and are not expected to overlap with scheduled continuance referendum periods.

Initial Regulatory Flexibility Act

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 150 handlers of nectarines and peaches who are subject to regulation under the order and approximately 800 growers of these fruits in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural growers are defined as those having annual receipts of less than $750,000. The majority of these handlers and growers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2005 season, the committees' staff estimated that the average handler price received was $10.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 600,000 containers to have annual receipts of $6,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2005 season, the committees' staff estimates that small handlers represent approximately 86 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 10 percent of the growers in the industry could be defined as other than small entities. For the 2005 season, the committees' staff estimated the average grower price received was $5.25 per container or container equivalent for nectarines and peaches. A grower would have to produce at least 142,858 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average grower price received during the 2005 season, the committees' staff estimates that small growers represent more than 90 percent of the producers within the industry.

With an average grower price of $5.25 per container or container equivalent, and a combined packout of nectarines and peaches of approximately 38,776,500 containers, the value of the 2005 packout is estimated to be $203,576,600. Dividing this total estimated grower revenue figure by the estimated number of growers (800) yields an estimated average revenue per grower of about $254,471 from the sales of peaches and nectarines.

This rule temporarily suspends the provisions in §§ 916.64(e) and 917.61(e), which specify the time period in which continuance referenda should be conducted to determine if growers favor continuance of the nectarine and peach marketing orders, respectively. Pursuant to these provisions, the next continuance referenda are scheduled for the period between December 1, 2006, and February 15, 2007. Authorization to suspend these provisions is provided in §§ 916.64(b) and 917.61(b) of the orders.

The committees recommended suspension of these provisions to allow the industry time to evaluate the effects of recent amendments to the marketing orders before voting on continuation of the programs. For instance, several of the amendments were intended to increase industry participation in program activities. Others were intended to modernize the marketing orders' operations to better reflect current industry business practices. Postponing the referenda will give the industry time to operate under the amended orders and determine whether the intended goals were met before the next continuance referenda. The continuance referenda cycles as provided in §§ 916.64(e) and 917.61(e) will resume in the period between December 1, 2010, and February 15, 2011. Referenda can be held in the interim if deemed appropriate by USDA.

This action is also expected to decrease the confusion likely to occur if the continuance referenda scheduled for the period between December 1, 2006, and February 15, 2007, are held as scheduled. Implementation of the order amendments requires a transition to mail balloting for NAC and PCC nominations in January 2007, which would overlap with the scheduled continuance referenda. Growers could each receive as many as four ballots during the overlapping nominations and referenda periods if they produce both nectarines and peaches. The committees are concerned that the flood of ballots could confuse growers and discourage them from participating fully. Therefore, the committees recommended that the continuance referenda be postponed. After this initial transitional period the biennial committee nominations should take place earlier in the year and are not expected to overlap with scheduled continuance referenda periods.

One alternative to this action would be to conduct the referenda as scheduled. However, the committees believe that growers need additional time to evaluate the effectiveness of the amendments that were adopted before voting on continuation of the marketing programs. Postponing the continuance referenda until a later time is expected to provide a better assessment of industry support for the orders. Further, if the continuance referenda were not postponed the referenda period would overlap with the committee nominations period. Voter confusion would likely occur due to the receipt of multiple ballots during that time. The committees were concerned that the confusion would lead to decreased grower participation in both the referenda and the committee nominations. Therefore, USDA has determined that the provisions requiring that continuance referenda be conducted during the period between December 1, 2006, and February 15, 2007, should be temporarily suspended.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine or peach handlers. 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.

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 addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industry and all interested persons were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the August 31, 2006, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

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/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.

This rule invites comments on the temporary suspension of provisions regarding the continuance referenda under the California nectarine and peach marketing orders. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committees' recommendations, and other information, it is found that the order provisions suspended by this interim final rule, as hereinafter set forth, do not tend to effectuate the declared policy of the Act for the 2006–07 period.

Pursuant to 5 U.S.C. 553, it is also found and determined upon 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 that 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 implemented as soon as possible since the nectarine and peach marketing order continuance referenda periods are scheduled to commence December 1, 2006; (2) the rule relaxes referenda requirements for the nectarine and peach industries; (3) the committees discussed this issue at public meetings and interested parties had opportunities to provide input at those meetings; and (4) the rule provides a 30-day comment period and any comments received will be considered period to finalization of this rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.64 [Amended]

■ 2. In paragraph (e) of § 916.64 Termination, the sentence ''The Secretary shall conduct such referendum within the same period of every fourth fiscal period thereafter.'' is temporarily suspended December 1, 2006, through February 15, 2007.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.61 [Amended]

■ 3. In paragraph (e) of § 917.61 Termination, the sentence ''The Secretary shall conduct such a referendum within the same period of every fourth fiscal period thereafter.'' is temporarily suspended December 1, 2006, through February 15, 2007.

Dated: December 21, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–22236 Filed 12–27–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 926

[Docket No. AMS–FV–06–0173; FV06–926–1 IFR]

Data Collection, Reporting and Recordkeeping Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order; Suspension of Provisions Under 7 CFR Part 926

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends Part 926 in the Code of Federal Regulations, which requires persons engaged in the handling or importation of fresh cranberries or cranberry products, but not subject to the reporting requirements of the Federal cranberry marketing order (7 CFR Part 929), to report sales, acquisition, and inventory information to the Cranberry Marketing Committee (Committee), and to maintain adequate records of such activities. The establishment of these requirements is authorized under section 8(d) of the Agricultural Marketing Agreement Act of 1937 (Act). The Committee, which administers marketing order 929, regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, has been delegated by the Department of Agriculture (USDA) to collect such information authorized under Part 926. Based on information provided by the Committee, USDA has determined that the collection of information under Part 926 is of marginal benefit to the industry and should be suspended.

DATES: Effective December 29, 2006; comments received by February 26, 2007 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: Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, Maryland 20737; Telephone: (301) 734–5243, Fax: (301) 734–5275, or E-mail at *Patricia.Petrella@usda.gov* or *Kenneth.Johnson@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 pursuant to 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

This rule suspends indefinitely Part 926 of the Code of Federal Regulations, which contains the reporting and recordkeeping requirements for entities engaged in the handling or importation of fresh cranberries or cranberry products but not subject to the cranberry marketing order (7 CFR Part 929) (order). Under Part 926, such entities are required to provide to USDA or its delegate, certain information regarding the sales, acquisitions, and inventories of fresh cranberries or cranberry products. USDA delegated authority to the Committee to collect such information. The Committee, which is also responsible for administering the order, has used this information to analyze market conditions and make volume control recommendations to USDA. Recently the Committee has determined that this data collection under Part 926 is not needed at this time, and advised USDA of its findings following its meeting on June 6, 2006.

Section 608d(3) of the Act, as amended, authorizes the collection of cranberry and cranberry product inventory information from producer-handlers, second handlers, processors, brokers, and importers that are not regulated by the order. Pursuant to this statutory authority, USDA issued reporting and recordkeeping requirements for these entities under Part 926 on January 12, 2005 (70 FR 1995). Sections 926.16, 926.17, and 926.18 require these entities to file and maintain certain reports and other information that are also required of handlers regulated under the order.

Part 926 was implemented to allow the Committee access to cranberry and cranberry product inventory information from throughout the industry, including segments outside the scope of the order, so that it could make more informed marketing decisions. For example, the Committee makes annual volume control recommendations to USDA that are based upon estimated cranberry production, acquisition, inventory, and sales for the total industry. Adding inventory data collected from entities outside the order to the data reported by handlers under the order was expected to provide a more accurate estimate of the total industry inventory, thus enabling the Committee to make more informed volume control recommendations.

However, after more than a year's experience collecting the data pursuant to Part 926, the Committee has found that most inventories are maintained by handlers regulated under the order, and that the amount of cranberries and cranberry products held by entities outside the order is minimal and does not affect the Committee's marketing decisions. The Committee met on June 6, 2006, to evaluate the effectiveness of the data collection conducted under Part 926. Taking into account the marginal benefits of this data collection, the committee advised USDA that the reporting and recordkeeping provisions under Part 926 should be suspended.

This action suspends the reporting and recordkeeping requirements of Part 926 indefinitely. Should changes occur in the cranberry industry that would warrant reimplementation of these requirements USDA may take appropriate action to reinstate these provisions under Part 926.

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. Small agricultural service firms are defined by the Small Business Administration (SBA) [13 CFR 121.201] as those having annual receipts less than $6,500,000. Small agricultural producers are defined

as those with annual receipts of less than $750,000. The Committee estimates that there are approximately 56 handlers, producer-handlers, processors, brokers, and importers subject to the data collection requirements under Part 926. The Committee further estimates that most of the entities required to file reports under Part 926 would be considered small under the SBA criteria.

This rule suspends indefinitely the provisions of 7 CFR Part 926, which require persons engaged in the handling of cranberries or cranberry products (including producer-handlers, second-handlers, processors, brokers, and importers) but not subject to the order to maintain adequate records and report sales, acquisitions, and inventory information to the Committee. Part 926 was established because the Committee needed inventory information from non-regulated entities as well as those subject to the order to better formulate its marketing decisions and recommendations. It is being suspended because the Committee has determined that, considering the size of the inventories held outside the scope of the order, collecting that data from the non-regulated entities is of marginal benefit to the industry.

This action suspends the reporting and recordkeeping requirements for these cranberry handlers and importers. It is also expected to reduce the Committee's costs associated with the collection and maintenance of that information.

Alternatives to this action included continuing to collect information as currently provided in Part 926, raising the inventory threshold that triggers the need for a non-regulated entity to report its inventory so that only those entities holding the largest inventories would be required to file reports, or requesting that non-regulated entities provide inventory information voluntarily. However, the Committee advised USDA that most cranberries and cranberry products are currently held in the inventories of the regulated handlers until needed by processors, which greatly reduces the likelihood that large unreported inventories exist. Therefore, the collection of inventory information from entities under Part 926 no longer benefits the industry.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements related to this rule were previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0222, Data Collection Requirements Applicable to Cranberries Not Subject to the Cranberry Marketing Order (7 CFR Part 926). This information collection package expires August 31, 2007. We are submitting this information collection for renewal and requesting OMB approval of a one-hour burden placeholder for future reimplementation should changes occur in the cranberry industry that require reinstatement of these reporting and recordkeeping requirements under Part 926.

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 addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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.

This rule invites comments on suspending the reporting and recordkeeping requirements under 7 CFR Part 926. All comments received will be considered prior to finalization of this interim final rule.

After consideration of all relevant material presented, it is found that Part 926, suspended in this interim final rule, as hereinafter set forth, does not tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule in 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 interim final rule is a relaxation in the reporting and recordkeeping requirements under 7 CFR Part 926 and should be in place as soon as possible for the upcoming 2006–07 season and (2) This interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 926

Cranberries and cranberry products, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR Part 926 is amended as follows:

PART 926—DATA COLLECTION, REPORTING AND RECORDKEEPING REQUIREMENTS APPLICABLE TO CRANBERRIES NOT SUBJECT TO THE CRANBERRY MARKETING ORDER

■ 1. The authority citation for 7 CFR Part 926 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§§ 926.1 through 926.21 [Suspended]

■ 2. In part 926, §§ 926.1 through 926.21 are suspended indefinitely.

Dated: December 21, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–22237 Filed 12–27–06; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 917, 925, and 930

[No. 2006–23]

RIN 3069–AB30

Limitation on Issuance of Excess Stock

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting a final rule limiting the ability of a Federal Home Loan Bank (Bank) to create member excess stock under certain circumstances. Under the rule, any Bank with excess stock greater than 1 percent of its total assets will be barred from further increasing member excess stock by paying dividends in the form of shares of stock (stock dividends) or otherwise issuing new excess stock. The final rule is based on a proposed rule that sought to impose a limit on excess stock and establish a minimum retained earnings requirement. The final rule deals only with the excess stock provisions of the proposal. The Finance Board intends to address retained earnings in a later rulemaking.

EFFECTIVE DATES: This rule will become effective on January 29, 2007.

FOR FURTHER INFORMATION CONTACT: Daniel E. Coates, Associate Director, Office of Supervision, *coatesd@fhfb.gov* or 202–408–2959; or Thomas E. Joseph, Senior Attorney-Advisor, Office of General Counsel, *josepht@fhfb.gov* or 202–408–2512. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Federal Home Loan Bank System (Bank System) consists of 12 Banks and the Office of Finance (OF). The Banks are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1421 *et seq.* Although the Banks are federally chartered institutions, they are privately owned and were created by Congress to support the financing of housing and community lending by their members (which are principally depository institutions) and, as such, are commonly categorized as ''government sponsored enterprises'' (GSEs). *See* 12 U.S.C. 1422a(a)(3)(B)(ii), 1424, 1430(i), and 1430(j). As GSEs, the Banks are able to borrow in the capital markets at favorable rates. They pass along this funding advantage to their members—and ultimately to consumers—by providing secured loans, known as advances, and other financial services to members at rates that members generally could not obtain elsewhere.

Prior to the passage of the Gramm-Leach-Bliley Act [1] (GLB Act) in November 1999, all Banks issued a single class of stock with a par value set at $100. Generally, all transactions in this stock were required to occur at the par value. *See* 12 U.S.C. 1426(a) and (b)(3) (1994); 12 CFR 925.19 and 925.22(b)(2). By statute, Bank members were required to purchase and retain a minimum amount of stock equal to the greater of: (i) $500; (ii) 1 percent of the member's aggregate unpaid principal balance of home mortgage or similar loans; or (iii) 5 percent of a member's outstanding advances. *See* 12 U.S.C. 1426(b) (1994). Further, the Bank Act did not impose specific minimum capital requirements on the Banks individually, although the Finance Board did establish such requirements by regulation. *See* 12 CFR 966.3(a).

The GLB Act amended the Bank Act to create a new capital structure for the Bank System and to impose statutory minimum capital requirements on the individual Banks. As part of this change, each Bank must adopt and implement a capital plan consistent with provisions of the GLB Act and Finance Board regulations. Among other things, each capital plan establishes stock purchase requirements that set the minimum amount of capital stock a Bank's members must purchase as a condition of membership and of doing business with the Bank. *See* 12 U.S.C. 1426(c)(1); 12 CFR 933.2(a). To date, all of the Banks but the Chicago Bank have implemented their GLB Act capital plans.

The Banks and OF operate under the supervision of the Finance Board. The Finance Board's primary duty is to ensure that the Banks operate in a financially safe and sound manner. *See* 12 U.S.C. 1422a(a)(3)(A). To the extent consistent with this primary duty, the Bank Act also requires the Finance Board to supervise the Banks and ensure that they carry out their housing finance mission, remain adequately capitalized, and are able to raise funds in the capital markets. *See* 12 U.S.C. 1422a(a)(3)(B). To carry out its duties, the Finance Board is empowered, among other things, ''to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of [the Bank Act].'' 12 U.S.C. 1422b(a)(1).

II. Proposed Rulemaking

On March 6, 2006, the Board of Directors of the Finance Board approved a proposed rule that was intended to address supervisory concerns relating to the amount of outstanding member excess stock and retained earnings, respectively, at the Banks.[2] These proposed amendments were published for comment in the **Federal Register** on March 15, 2006. *See* Proposed Rule: Excess Stock Restrictions and Retained Earnings Requirements for the Federal Home Loan Banks, 71 FR 13306 (Mar. 15, 2006) (Proposed Rule). The 120-day comment period closed on July 13, 2006. The Finance Board received 1,066 comment letters, nearly all of which opposed some aspect of the proposed rule.

Retained Earnings Requirements. In response to long-standing Finance Board concerns, the proposed rule would have required each Bank to achieve and maintain a minimum level of retained earnings equal to $50 million plus 1 percent of the Bank's non-advance assets. The proposal also would have barred Banks not meeting that requirement from distributing more than 50 percent of net income as dividends except with the approval of the Finance Board. The Finance Board continues to believe that retained earnings are a critical component of Bank capital. However, it also sees merit in the suggestions of some commenters that the retained earnings requirement could be refined to correlate more closely to the risk profile of each Bank and that restrictions on dividend payments could be set so as not to unduly disrupt the value of Bank membership. Accordingly, and in view of the Finance Board's previously announced initiative to modernize and overhaul its risk-based capital regulation to reflect advances in identifying and managing risks that have occurred since the capital regulations were first adopted,[3] the Finance Board has decided not to address the minimum amount of retained earnings as part of this rulemaking.

Excess Stock Limitation. The proposed rule would have limited the amount of member excess stock that a Bank could have outstanding to 1 percent of its total assets. A Bank with member excess stock above that limit as of the end of any calendar quarter would have been required to report the violation to the Finance Board. Any such Bank also would have been required either to cure the violation or to submit a plan to the Finance Board to bring its level of member excess stock into compliance with the limit. The proposal also would have prohibited a Bank from paying stock dividends and from issuing excess stock to members regardless of how much excess stock it had outstanding.

In explaining its reasons for the proposed rule, the Finance Board noted that it had intended to address both mission and safety and soundness concerns. With regard to the mission concerns, the Finance Board stated that the Banks often have used member excess stock to support capital market investments that typically generate greater earnings than the costs of the Banks' debt. Although some level of such investments is appropriate for liquidity and other purposes, high levels of excess stock can create an incentive for the Banks to create large portfolios of arbitrage investments that are meant to provide a return on the excess stock, but which do not necessarily further the Bank System's public purpose. Such arbitrage activities generally result in the Banks being larger and holding more debt than otherwise would be the case.

With regard to the safety and soundness concerns, the Finance Board explained that the historical practice of most Banks to honor a member's request to repurchase excess stock creates

[1] Pub. L. 106–102, 133 Stat. 1338 (Nov. 12, 1999).

[2] Excess stock is any Bank stock held by a member that exceeds that member's minimum investment in capital stock required by the Bank Act, Finance Board regulations, or the Bank's capital plan.

[3] At the Finance Board meeting during which the proposed excess stock and retained earnings requirements were approved for publication, Finance Board staff indicated that it planned to explore and develop a more robust approach to setting risk-based capital requirements for the Banks. See Transcript of March 8, 2006 Meeting (Open Session) at p. 17. Transcripts of open sessions of Finance Board meetings are available at the Finance Board's Web site: *http://www.fhfb.gov/Default.aspx?Page=40.*

certain expectations among the members, which could lead to capital instability, particularly if a Bank were to experience large-scale repurchase requests in a short period of time. Proposed Rule, 71 FR at 13308–13309. These problems could be compounded if a Bank used the excess stock to capitalize investments that are intermediate- and long-term in nature, some of which may have significant market risk and may not be readily saleable without realizing a substantial loss in market value, such as mortgage-backed securities, federal agency securities, or acquired member assets (AMA). *See* Proposed Rule, 71 FR at 13308–13309. Such a strategy would make it difficult for a Bank to shrink its balance sheet to meet the repurchase requests. The Finance Board noted that a failure to meet member expectations could adversely affect the members' confidence in the Bank System and how banking regulators treat Bank stock for risk-based capital purposes. Proposed Rule, 71 FR at 13309. Any loss of confidence could prompt members to redeem their excess stock, withdraw from membership, or cease doing business with a Bank, all of which could undermine a Bank's financial stability. To avoid a loss of confidence, a Bank could feel pressure to continue to repurchase stock, even if that was not in the best long-term interest of the Bank's capitalization or profitability.[4]

General Overview of Comments. The Finance Board received 1,066 comment letters on its proposal, all but 2 of which opposed adoption of the proposed rule, either in whole or in part. The Finance Board received comments from all 12 Banks, many banking or financial trade groups, organizations involved in affordable housing, Bank members, individuals, and other interested parties. Of the 1,066 comment letters, 454 addressed the excess stock limit, the prohibition on stock dividends, or both. Of those 454 letters, 409 opposed the 1 percent limit on excess stock, 403 opposed the prohibition against paying stock dividends, and 358 opposed both. In addition, 6 letters addressed the prohibition on the sale of stock that is excess at the time of sale. Four of those letters also addressed the excess stock limit or the prohibition on stock dividends. Of the 454 letters addressing the excess stock limit, the prohibition on stock dividends, or both, 343 were submitted by persons located within states that constitute the geographic district of the Cincinnati Bank.

The substance of the issues raised by the comment letters is discussed in some detail below, as part of the discussion of the provisions of the final rule.[5] Generally speaking, significant numbers of commenters urged the Finance Board to withdraw the proposed rule, contending that it would adversely affect the value of membership, was contrary to the statute, would reduce the total capital of the Banks, would lower liquidity and earnings, and would reduce contributions to the Affordable Housing Program (AHP).[6]

Notwithstanding the various contentions raised by the comment letters, the Finance Board remains concerned that high levels of member excess stock can pose a risk to the Banks and provide an incentive for the Banks to engage in arbitrage investments at a level that is inconsistent with their statutory mission. For those reasons, the Finance Board has determined that it should adopt a final rule regarding excess stock, albeit with a number of changes to address criticisms made in the comment letters.

III. Final Rule

The key features of the proposed rule were a fixed limit on the amount of member excess stock that any Bank could have outstanding, along with an absolute ban on the payment of stock dividends and sales of additional excess stock. The key feature of the final rule is that it limits the ability of a Bank to issue new shares of excess stock once the amount of its outstanding excess stock reaches a certain threshold. Specifically, the final rule provides that any Bank with outstanding excess stock greater than 1 percent of its total assets may not pay dividends in the form of stock or otherwise issue shares of excess stock. Banks with excess stock below that threshold will not be limited in their ability to pay stock dividends or otherwise issue shares of excess stock. The rule also clarifies that a Bank may not issue excess stock as a stock dividend or otherwise if after the issuance of such stock, the Bank's outstanding excess stock would be above 1 percent of its total assets. In light of those changes, the final rule eliminates the proposed provisions that would have required non-complying Banks to report any violations of the limit and to cure the violation or develop a compliance plan within 60 days.

The final rule will consolidate the excess stock restrictions into § 925.23 of the Finance Board regulations rather than adopting a newly created part as had been proposed.[7] The final rule also adopts the definition of ''excess stock'' (with a modest clarifying change) set forth in the proposed rule and moves this definition from § 930.1 to § 900.2 of the Finance Board rules. As explained in the preamble to the proposed rule, these changes were meant to be clarifying in nature and to assure that the definition of excess stock applied both to the 11 Banks that have implemented their capital plans and the 1 Bank that has not done so. *See* Proposed Rule, 71 FR at 13310. Finally, the Finance Board is adopting the proposed provision requiring dividends to be calculated based on actual, rather than projected, earnings.

IV. Discussion

A significant number of the commenters opposed the creation of any limit on excess stock, as well as the Finance Board's decision to set the limit at 1 percent of each Bank's assets. The commenters questioned the need for such a rule, as well as the authority of the Finance Board to adopt the rule, and contended, among other things, that the proposed rule represented a major change in Finance Board policy, was inconsistent with the capital provisions of the GLB Act and the approved capital plans, and would have untoward consequences for the Banks and their members.

[4] Regulators of other GSEs whose stock generally is repurchased have recognized the incentive for a GSE to try to avoid suspending repurchases of stock. For example, in proposing rules addressing capital and other issues for the Farm Credit System, the Farm Credit Administration noted that:

For an association to use this authority [to refrain from repurchasing stock] in a way that makes borrower stock a meaningful buffer [against losses], the association has to recognize potential losses in a timely manner and be willing to withhold proceeds from stock retirement requests. However, such actions can signal problems to existing and potential borrowers at the association. Thus, an association might continue to make retirements until the evidence of serious adverse financial conditions is abundantly clear.

Proposed Rule: Funding and Fiscal Affairs, Loan Policies, and Operations and Funding Operations; General Provisions; Disclosure to Shareholders; Capital Adequacy, 60 FR 38521, 38522 (July 27, 1995).

[5] A large number of the comments specifically addressed the proposed retained earnings requirements. Because the Finance Board has decided to adopt only the excess stock provisions at this time, it is not addressing comments that specifically relate to the retained earnings provisions of the proposed rule.

[6] Each Bank has to contribute 10 percent of its net income to the AHP or such prorated sums as may be required to assure that the aggregate contributions of all Banks equal no less than $100 million in any given year. *See* 12 U.S.C. 1430(j)(5).

[7] 12 CFR 925.23. Prior to the changes adopted in this rulemaking, § 925.23 addressed the rights of members to purchase excess stock. The Finance Board had proposed to incorporate the excess stock limitation along with the retained earnings requirements into a new part 934 of its regulations. *See* Proposed Rule, 71 FR at 13315.

Need for the rule. Notwithstanding the contentions of many of the comment letters, the Finance Board believes that high levels of excess stock could pose correspondingly greater risks to the Banks and that the final rule is needed to address those risks. There have been instances in which certain of the Banks have used excess stock to capitalize significant arbitrage investments or portfolios of intermediate- or long-term investments in federal agency securities or mortgages, both of which have exposed the Banks to greater market risk. For example, one Bank relied on excess stock to capitalize significant investments in federal agency securities that generated an initial favorable spread only because the Bank took on considerable interest-rate risk in funding the investments. Other Banks have used excess stock to capitalize investments in intermediate- and long-term investments, including AMA, which may well remain outstanding beyond the redemption periods associated with the excess stock. Such investments capitalized with excess stock pose additional risks relative to AMA investments capitalized by required stock, i.e., stock held pursuant to an activity-based stock purchase requirement, because the excess stock has proven to be a less stable source of capital. In certain cases, members owning excess stock have sought to have that stock redeemed or repurchased when the returns generated by the arbitrage investments and AMA caused the Bank's dividend yield to decrease.

Although the Finance Board believes that high levels of excess stock must be addressed, it is receptive to the suggestions of some commenters that the regulatory solution should be more narrowly focused on the principal risks, i.e., those Banks with the greatest levels of excess stock. For that reason, the Finance Board has determined that an appropriate approach is to restrict the Banks with the highest levels of excess stock from increasing the amount of their outstanding excess stock through the issuance of stock dividends or the sale of excess stock. The Finance Board believes that the 1 percent of assets level, which originally was proposed as a cap on the amount of excess stock that may be outstanding, is an appropriate level to trigger the restrictions imposed by the final rule. Thus, Banks with excess stock greater than 1 percent of total assets will be prohibited from paying stock dividends and otherwise issuing excess stock to their members. Banks with excess stock less than or equal to 1 percent of total assets will be able to do so, provided such action does not result in the Bank's total excess stock exceeding 1 percent of its assets.

As was discussed in the proposed rule, excess stock of up to 1 percent of assets should allow any Bank sufficient latitude to support both its mortgage-backed securities portfolio (up to 300 percent of its capital) plus a sufficient portfolio of assets for liquidity purposes. In recent years, for example, the Banks' investments in mortgage-backed securities have averaged between 11 and 13 percent of assets and their liquidity investments have averaged between 8 and 12 percent of assets. *See* Proposed Rule, 71 FR at 13309. Moreover, the fact that 8 Banks have been able to maintain adequate liquidity, serve their mission goals, and provide members with adequate services while keeping excess stock at levels below 1 percent of total assets indicates that the final rule should not pose an unreasonable burden on any Bank. With respect to those Banks with levels of excess stock below 1 percent of assets, the Finance Board intends to monitor the extent of their reliance on excess stock as part of its normal supervisory processes and will take appropriate supervisory action if the levels of or trends in excess stock pose potential safety and soundness problems for those Banks.

Legal authority. A number of the comment letters questioned the authority of the Finance Board to adopt a regulation limiting the amount of excess stock or prohibiting the payment of stock dividends. Those commenters generally contended that various provisions of the Bank Act left those matters to the individual Banks to address. The most straightforward response to that contention is that the Congress has not addressed the issue of excess stock, either in the GLB Act or in any other provisions of the Bank Act. Moreover, the Finance Board believes that the Bank Act provides ample authority for it to adopt a rule limiting excess stock, and further notes that the changes made in the final rule may well render moot certain of the arguments raised with respect to the legal authority for the proposed rule.

Congress has provided that the primary duty of the Finance Board is to ensure that the Banks operate in a financially safe and sound manner and, secondarily, to supervise the Banks and, among other things, to ensure that they remain adequately capitalized and carry out their housing finance mission. 12 U.S.C. 1422a(a)(3)(A) and (B). The Finance Board previously has described the broad nature of this authority, noting that any regulatory actions taken with the intent to enhance the safety and soundness of the Banks or to carry out any of the other statutory duties are within the legal authority conferred by those provisions, unless they would conflict with some other express limitations imposed by Congress elsewhere in the Bank Act.[8] Because the Finance Board is adopting this regulation to address its supervisory concerns about the risks associated with high levels of excess stock, the Finance Board believes that regulation is within its authority to ensure the safety and soundness of the Banks under section 2A of the Bank Act.[9] The Finance Board similarly believes that there is nothing elsewhere in the Bank Act that expressly addresses the issue of excess stock that might limit the authority conferred by section 2A of the Bank Act.

Any analysis of the Finance Board's authority to adopt a regulation must consider whether Congress has addressed the precise question at issue. If so, the Finance Board must accept the decisions made by the Congress. If Congress has not addressed the precise question, the Finance Board may do so, provided it does so in the manner permitted under the Administrative Procedures Act. *See Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837, 843–844 (1984). With regard to this rule, the precise issues are whether Congress has established a limit for the amount of excess stock that a Bank may have outstanding or otherwise has addressed the ability of the Banks to issue excess stock or has expressly assigned the responsibility for making these determinations to the Banks or to the Finance Board. In the view of the Finance Board, Congress has not expressly addressed these issues, and has not delegated to the Banks the sole right to determine the degree to which they may create or rely on excess stock to capitalize their business. Indeed, the Bank Act largely is silent on the matter of excess stock. Even the arguments raised by the commenters would require one to infer from various provisions of the Bank Act a congressional intent to leave the matter to the discretion of the Banks. In the view of the Finance Board, the context of those provisions does not suggest such an inference.[10] In the

[8] *See* Office of General Counsel Opinion, 2004–GC–01, Federal Home Loan Bank Securities Registration and Disclosure (June 16, 2004). This opinion is available at the Finance Board's Web site, *http://www.fhfb.gov/GetFile.aspx?FileID=457*.

[9] The Bank Act also authorizes the Finance Board to promulgate and enforce any regulations as it believes are necessary to carry out the provisions of the Bank Act. 12 U.S.C. 1422b(a)(1).

[10] Some commenters contended that section 6(e) of the Bank Act, 12 U.S.C. 1426(e), which

Continued

absence of any express provision in the Bank Act addressing the issue of excess stock or purporting to limit the authority of the Finance Board to act to limit the risks associated with high levels of excess stock, the Finance Board is not persuaded that it lacks the legal authority to act.

Agency policy. A number of the commenters contended that the proposed rule would have constituted a major change in agency policy, reasoning that when the Finance Board approved capital plans allowing certain of the Banks to impose a 0 percent stock purchase requirement for certain assets, it effectively established a policy to allow each Bank to determine its appropriate level of excess stock. Although the Finance Board clearly did approve plans that allow for some amount of excess stock to be used by the Banks, its prior approvals did not purport to address the issue of when the excess stock might pose a level of added risk that would raise safety and soundness concerns for those Banks, which is the issue addressed by the final rule. Had the Finance Board intended to set a policy regarding the appropriate level of excess stock, it most likely would have expressed that policy in the resolutions issued when approving the capital plans. There is nothing in any of the resolutions approving the 12 capital plans, however, that remotely suggests that the Finance Board intended to establish a policy on excess stock, such as by allowing Banks to accumulate unlimited amounts of excess stock or by committing that matter solely to the discretion of the Banks.

In any event, the Finance Board is not bound to adhere to a policy if subsequent events make clear the need for change. Recent developments at several of the Banks relating to the manner and degree to which they have relied on excess stock have made clear to the Finance Board that there can be significant risks associated with high levels of excess stock. The final rule is intended to address those risks in a manner that takes into consideration several of the key criticisms posed by the commenters. For example, some commenters believed that the proposed rule would have required a Bank to redeem or repurchase immediately shares of excess stock above 1 percent of its assets, which would have had tax consequences to the members that held excess stock as a result of prior stock dividends. Although the proposed rule would not have required any Bank to undertake forced redemptions or repurchases, the final rule addresses those criticisms. The rule does not require a Bank with excess stock above 1 percent of its assets to reduce its excess stock. The Finance Board, instead, has opted to address its supervisory concerns about excessive levels of excess stock by preventing Banks with excess stock above 1 percent of their assets from further increasing excess stock beyond current levels by paying stock dividends or otherwise issuing excess stock.

Payment of dividends based on actual earnings. The Finance Board is adopting as proposed changes to § 917.9 of its rules that will require a Bank to declare and pay dividends based on actual earnings and will prohibit a Bank from declaring and paying dividends based on anticipated or projected earnings. Other proposed changes that would have required a Bank to base dividends on earnings for the calendar quarter are not being adopted. Thus, a Bank will be able to declare and pay its dividend after consideration of its actual current net earnings for any period of its choosing.

The provision requiring a Bank to base dividends on actual earnings appeared to be non-controversial. To the extent the Finance Board received comments on this part of the proposed rule, commenters generally objected to requiring a Bank to base dividends on calendar-quarter earnings. As already discussed, the Finance Board is not requiring that dividends be tied to calendar quarter earnings, as it had proposed.

V. Regulatory Flexibility Act

The final rule will apply only to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the final rule will not have a significant economic effect on a substantial number of small entities.

VI. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq*. Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 900

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 917

Community development, Credit, Federal home loan banks, Housing, Organizations and functions (Government agencies), Reporting and recordkeeping requirements.

12 CFR Part 925

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 930

Capital, Credit, Federal home loan banks, Investments, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Finance Board is amending 12 CFR chapter IX as follows:

PART 900—GENERAL DEFINITIONS APPLYING TO ALL FINANCE BOARD REGULATIONS

■ 1. The authority citation for part 900 continues to read as follows:

Authority: 12 U.S.C. 1422b(a).

■ 2. Amend § 900.2 by adding in alphabetical order, a defined term to read as follows:

§ 900.2 Terms relating to Bank operations, mission and supervision.

* * * * *

Excess stock means that amount of a Bank's capital stock owned by a member

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authorizes the Banks to redeem or repurchase stock in excess of a member's minimum stock purchase requirement, reflects an intent by Congress to allow each Bank to determine how much excess stock it may have outstanding. On its face, however, that provision simply authorizes the individual Banks, after establishing minimum stock purchase requirements as part of their respective capital plans, to redeem or repurchase stock that becomes excess due to the ebb and flow of business with its members. A better reading of the provision is that it confers certain rights on the Banks vis-à-vis their members with regard to the redemption or repurchase of excess stock. The Finance Board does not believe that there is any reasonable way to construe that provision as reflecting an intent on the part of Congress to override the Finance Board's authority to address safety and soundness concerns associated with high levels of excess stock. Other commenters contended that the grant of incidental powers by section 12 of the Bank Act, 12 U.S.C. 1432(a), reflects an intent by Congress to allow the Banks to determine the form of any dividend paid to their members, *i.e.*, payment in cash or in shares of Bank stock, which effectively precludes the Finance Board from limiting stock dividends. The Finance Board notes that the provision that confers the incidental powers also provides that they must be exercised consistently with the other provisions of the Bank Act. In the view of the Finance Board, that exception means that even if stock dividends are within the incidental powers of the Banks, they also are subject to any limits that the Finance Board may impose for safety and soundness reasons, as is the case here. Moreover, the Finance Board notes that the final rule is considerably less expansive than was the proposed rule, in that it bans stock dividends only for those Banks that have accumulated more than 1 percent of their total assets in excess stock, rather than an absolute ban, as had been proposed.

or other institution in excess of that member's or other institution's minimum investment in capital stock required under the Bank's capital plan, the Act, or the Finance Board's regulations, as applicable.

* * * * *

PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

■ 3. The authority citation for part 917 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1427, 1432(a), 1436(a), and 1440.

■ 4. Revise § 917.9 to read as follows:

§ 917.9 Dividends.

(a) A Bank's board of directors may declare and pay a dividend only from previously retained earnings or current net earnings and only in accordance with any other applicable limitations on dividends set forth in the Act or this chapter. Dividends on such capital stock shall be computed without preference.

(b) A Bank's board of directors may not declare or pay a dividend based on projected or anticipated earnings and may not declare or pay a dividend if the par value of the Bank's stock is impaired or is projected to become impaired after paying such dividend.

(c) The requirement in paragraph (a) of this section that dividends be computed without preference shall cease to apply to any Bank that has established any dividend preferences for 1 or more classes or subclasses of its capital stock as part of its approved capital plan, as of the date on which the capital plan takes effect.

PART 925—MEMBERS OF THE BANKS

■ 5. The authority citation for part 925 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, and 1442.

■ 6. Revise § 925.23 to read as follows:

§ 925.23 Excess stock.

(a) *Sale of excess stock.* Subject to the restriction in paragraph (b) of this section, a member may purchase excess stock as long as the purchase is approved by the member's Bank and is permitted by the laws under which the member operates.

(b) *Restriction.* Any Bank with excess stock greater than 1 percent of its total assets shall not declare or pay any dividends in the form of additional shares of Bank stock or otherwise issue any excess stock. A Bank shall not issue excess stock, as a dividend or otherwise, if after the issuance, the outstanding excess stock at the Bank would be greater than 1 percent of its total assets.

PART 930—DEFINITIONS APPLYING TO RISK MANAGEMENT AND CAPITAL REGULATIONS

■ 7. The authority citation for part 930 is revised to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1436(a), 1440, 1443, and 1446.

§ 930.1 [Amended]

■ 8. Amend § 930.1 by removing the definition of the term ''excess stock''.

Dated: December 22, 2006.

By the Board of Directors of the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

[FR Doc. E6–22325 Filed 12–27–06; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25745; Directorate Identifier 2006–CE–47–AD; Amendment 39–14866; AD 2006–26–08]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2006–02–51, which applies to certain Raytheon Aircraft Company Model 390 airplanes. AD 2006–02–51 currently requires you to inspect the left engine hydraulic pump outlet tube and the clamp; replace the clamp at each inspection; replace the hydraulic pump outlet tube immediately if any problem is found; and report the results of each inspection or replacement to the FAA. This AD is the result of several hydraulic pump outlet tube failures after issuance of AD 2006–02–51, including failures on the right engine. This AD requires you to visually inspect the hydraulic pump outlet tube on both engines on a recurring basis and immediately replace the tube if damage is found. This AD also requires incorporation of an Airplane Flight Manual (AFM) change to not allow operation of an engine with its associated firewall hydraulic shutoff valve closed. In addition, this AD requires you to replace the hydraulic pump outlet tube if an engine is operated with its firewall hydraulic shutoff valve closed. We are issuing this AD to prevent failure of the hydraulic pump outlet tube and consequent leaking of hydraulic fluid. Such leakage could result in a fire. There is also a risk of loss of hydraulic system functions including normal gear extensions, speed brakes, roll spoilers, lift dump, and normal brakes.

DATES: This AD becomes effective on December 28, 2006.

The Director of the Federal Register previously approved the incorporation by reference of the documents listed in this AD on February 2, 2006 (71 FR 5581, February 2, 2006).

We must receive any comments on this AD by February 26, 2007.

ADDRESSES: Use one of the following addresses to comment on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043.

To view the comments to this AD, go to *http://dms.dot.gov*. The docket number is FAA–2006–25745; Directorate Identifier 2006-CE–47–AD.

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Propulsion Aerospace Engineer, ACE 116W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

Reports of four failures of the left-hand engine hydraulic pump outlet tube on Raytheon Model 390 airplanes caused us to issue AD 2006–02–51, Amendment 39–14459 (71 FR 5581,

February 2, 2006). AD 2006–02–51 currently requires you to do the following:

- Inspect the hydraulic pump outlet tube on the left engine;
- replace the clamp at each inspection;
- replace the hydraulic pump outlet tube immediately if any of the problems identified in the service bulletin are found; and
- report the results of each inspection or replacement to the FAA.

Since issuing AD 2006–02–51, we have received additional reports of failures of the hydraulic pump outlet tube, including failures on the right engine. Since failures continue to occur and are no longer limited to the left engine hydraulic pump outlet tube, the repetitive inspection interval of 50 hours time-in-service (TIS) required by AD 2006–02–51 and procedures in AD 2006–02–51 to only inspect the left hydraulic pump outlet tube do not adequately address the unsafe condition.

Failure of these hydraulic pump outlet tubes, if not prevented, could cause flammable fluid leakage in the engine nacelle. Such leakage could result in a fire. There is also a risk of loss of hydraulic system functions including normal gear extensions, speed brakes, roll spoilers, lift dump, and normal brakes.

Relevant Service Information

Raytheon Mandatory Service Bulletin No. SB 29–3771, dated January, 2006; and Raytheon Safety Communique No. 267, dated January 2006, included in AD 2006–02–51 will be retained for this AD.

FAA's Determination and Requirements of This AD

We are issuing this AD because we evaluated all the information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This AD supersedes AD 2006–02–51 and requires the following on Raytheon Model 390 airplanes:

- Repetitive visual inspections of the hydraulic pump outlet tube on both engines;
- replacement of the hydraulic pump outlet tube clamp on the left-hand engine at each inspection;
- immediate replacement of the hydraulic pump outlet tube if damage is found;
- incorporation of a revision to the Airplane Flight Manual (AFM) to not allow operation of an engine with its firewall hydraulic shutoff valve closed; and
- replacement of the hydraulic pump outlet tube if an engine is operated with the firewall hydraulic shutoff valve closed.

This AD is considered interim action. The FAA is working with the type certificate holder on developing a design change for these hydraulic pump outlet tubes. The FAA will take future rulemaking action to address this unsafe condition for the long-term.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and an opportunity for public comment. We invite you to send any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number ''FAA–2006–25745; Directorate Identifier 2006–CE–47–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2006–02–51, Amendment 39–14459 (71 FR 5581, February 2, 2006), and by adding a new AD to read as follows:

2006–26–08 Raytheon Aircraft Company: Amendment 39–14866; Docket No. FAA–2006–25745; Directorate Identifier 2006–CE–47–AD.

Effective Date

(a) This AD becomes effective on December 28, 2006.

Affected ADs

(b) This AD supersedes AD 2006–02–51; Amendment 39–14459.

Applicability

(c) This AD applies to Model 390 airplanes, all serial numbers, that are certificated in any category:

Unsafe Condition

(d) This AD is the result of several hydraulic pump outlet tube failures after issuance of AD 2006–02–51. We are issuing this AD to prevent failure of the hydraulic pump outlet tubes and consequent leaking of hydraulic fluid. Such leakage could result in a fire. There is also a risk of loss of hydraulic system functions including normal gear extensions, speed brakes, roll spoilers, lift dump, and normal brakes.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Visually inspect the hydraulic pump outlet tube for evidence of chafing, excessive vibration, wear, deterioration, or hydraulic fluid leakage, as follows: (i) *For the left-hand (LH) engine:* Remove the clamp, perform the inspection, and replace the clamp with a new one as specified in Raytheon Mandatory Service Bulletin No. SB 29–3771 after each inspection (ii) *For the right-hand (RH) engine:* Perform the inspection. Removal and replacement of the clamps are not necessary	Initially at whichever of the following occurs first and thereafter at intervals not to exceed 25 hours time-in-service (TIS): (A) Within the next 25 hours TIS after December 28, 2006 (the effective date of this AD); or (B) At the next inspection required by AD 2006–02–51	Inspect following Raytheon Safety Communique No. 267, dated January 2006. Raytheon Safety Communique No. 267, dated January 2006, addresses the LH engine. Use the same inspection procedures for the RH engine hydraulic pump outlet tube (P/N 390–580037). Remove and replace the clamp (LH only) following Raytheon Mandatory Service Bulletin No. SB 29–3771, dated January 2006.
(2) Replace the hydraulic pump outlet tube, Part Number (P/N) 390–580035 (or FAA-approved equivalent) for the LH engine or P/N 390–580037 (or FAA-approved equivalent) for the RH engine.	Each and every time any of the following occurs: (i) Prior to further flight after any inspection from paragraph (e)(1) of this AD where evidence of chafing, excessive vibration, wear, deterioration, or hydraulic fluid leakage is found; and (ii) Within 1 hour TIS following identification of an intended or unintended engine operation with the hydraulic valve closed.	Raytheon Aircraft Premier 1 Model 390 Maintenance Manual, P/N 390–590001–0015.
(3) Incorporate Raytheon Aircraft Company Part Number 390–590001–0003C3TC6, dated September 16, 2006 into the Airplane Flight Manual (AFM).	Within 5 days after December 28, 2006 (the effective date of this AD)	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the AFM changes requirement of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office, FAA, ATTN: James P. Galstad, Propulsion Aerospace Engineer, ACE 116W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4135; fax: (316) 946–4107, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(g) You must use Raytheon Mandatory Service Bulletin No. SB 29–3771, dated January 2006; and Raytheon Safety Communique No. 267, dated January 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register previously approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51 on February 2, 2006 (71 FR 5581, February 2, 2006).

(2) For service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on December 22, 2006.

Kim Smith,

Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22382 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–25941; Airspace Docket No. 06–ACE–11]

Modification of Class E Airspace; Creston, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by modifying the Class E airspace area at Creston Municipal Airport, IA. An examination of controlled airspace for Creston, IA, revealed discrepancies in the legal description for the Class E airspace area. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft executing Standard Instrument Approach Procedures (SIAP) to Creston Municipal Airport.

DATES: This direct final rule is effective on 0901 UTC, March 15, 2007. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments for inclusion in the Rules Docket must be received on or before December 29, 2006.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2006–25941/ Airspace Docket No. 06–ACE–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Grant Nichols, System Support, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2522.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet AGL (E5) at Creston Municipal Airport, IA. This amendment increases the size of the current extension to the airspace area relative to the airport. This modification brings the legal description of the Creston Municipal Airport, IA, MO Class E5 airspace area into compliance with FAA Orders 7400.2F and 8260.19C. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2006–25941/Airspace Docket No. 06–ACE–11.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Creston Municipal Airport, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

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

* * * * *

ACE IA E5 Creston, IA

Creston Municipal Airport, IA
(Lat. 41°01′17″ N., long. 94°21′48″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Creston Municipal Airport, IA and within 2.6 miles each side of the 169° bearing from the airport extending from the 6.5-mile radius to 11 miles south of the airport.

* * * * *

Issued in Forth Worth, TX, on December 11, 2006.

Donald R. Smith,

Manager, System Support Group, ATO Central Service Area.

[FR Doc. 06–9826 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30528; Amdt. No. 3199]

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 December 28, 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 December 28, 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 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 an FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a

''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on December 15, 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 number	Subject
11/22/06	CO	Hayden	Yampa Valley	6/6578	Rescind NOTAM Published in TL07–1.ILS or LOC/DME Y Rwy 10, Amdt 2.
11/29/06	CO	Hayden	Yampa Valley	6/6653	ILS or LOC/DME Y Rwy 10, Amdt 2.
12/04/06	FL	Tampa	Tampa Int	6/7515	RNAV (RNP) Y Rwy 18L, Orig-A.
12/04/06	ME	Augusta	Augusta State	6/7520	VOR Rwy 35, Amdt 5.
12/04/06	NC	Reidsville	Rockingham County NC Shiloh	6/7563	VOR/DME A, Amdt 8.
12/04/06	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7582	RNAV (GPS) Rwy 8, Orig.
12/04/06	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7585	RNAV (GPS) Rwy 7R, Orig.
12/04/06	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7586	ILS Rwy 26, Orig-A.
12/04/06	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7587	ILS Rwy 7L, Amdt 10A.
12/04/06	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7588	RNAV (GPS) Rwy 7L, Orig.
12/04/06	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7589	ILS Rwy 7R, Amdt 1A.
12/05/06	CA	Chico	Chico Muni	6/7596	ILS Rwy 13L, Amdt 10A.
12/05/06	DC	Washington	Ronald Reagan Washington Ntl	6/7614	RNAV (RNP) Rwy 19, Orig-A.
12/05/06	AZ	Phoenix	Phoenix Sky Harbor Intl	6/7645	ILS Rwy 8, Orig.
12/05/06	NY	White Plains	Westchester County	6/7665	ILS Rwy 16, Amdt 22F.
12/05/06	NY	White Plains	Westchester County	6/7666	NDB Rwy 16, Amdt 21.
12/08/06	NY	Ogdensburg	Ogdensburg Intl	6/7937	LOC Rwy 27, Amdt 2A.
12/08/06	AK	Hooper Bay	Hooper Bay	6/7938	RNAV (GPS) Rwy 13, Orig.
12/08/06	AK	Hooper Bay	Hooper Bay	6/7939	RNAV (GPS) Rwy 31, Orig.
12/08/06	AK	Hooper Bay	Hooper Bay	6/7940	VOR/DME Rwy 31, Orig.
12/08/06	NC	Asheville	Asheville Regional	6/7949	ILS Rwy 16, Amdt 3A.
12/08/06	NC	Lincolnton	Lincolnton-Lincoln County Regional	6/7956	LOC Rwy 23, Orig-A.
12/08/06	NC	Lincolnton	Lincolnton-Lincoln County Regional	6/7957	NDB or GPS Rwy 23, Amdt 2.
12/08/06	WV	Martinsburg	Eastern West Virginia Regional/Shepherd Field	6/7962	ILS Rwy 26, Amdt 6.
12/08/06	NC	Shelby	Shelby Muni	6/7985	NDB Rwy 23, Orig.
12/08/06	NC	Fayetteville	Fayetteville Regional/Grannis Field	6/7986	ILS Rwy 4, Amdt 15.
12/12/06	MD	Baltimore	Baltimore-Washington Intl	6/8227	ILS Rwy 33L, Amdt 9B.
12/12/06	DE	Wilmington	New Castle	6/8228	ILS Rwy 1, Amdt 20A.
12/12/06	DE	Wilmington	New Castle	6/8230	VOR OR GPS Rwy 1, Amdt 3B.
09/28/06	GU	Agana	Guam Intl	6/1659	RNAV (RNP) Z Rwy 6L, Orig.
09/28/06	GU	Agana	Guam Intl	6/1664	RNAV (RNP) Z Rwy 24L, Orig.

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FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA74

Appliance Labeling Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule.

SUMMARY: The Energy Policy Act of 2005 directs the Commission to issue labeling requirements for the electricity used by ceiling fans to circulate air. The Commission is publishing amendments to the Appliance Labeling Rule that establish energy labeling requirements for these products.

DATES: The amendments published in this final rule will become effective on January 1, 2009.

ADDRESSES: Requests for copies of this document are available from: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

Section 324 of the Energy Policy and Conservation Act of 1975 (''EPCA'') (42 U.S.C. 6291–6309), as amended, requires the FTC to prescribe labeling rules for the disclosure of estimated annual energy cost, or alternative energy consumption information, for a variety of products covered by the statute, including home appliance, lighting, and plumbing products.[1] The Commission's Appliance Labeling Rule (''the Rule'') (16 CFR part 305) implements the requirements of EPCA by directing manufacturers to disclose energy information about major household appliances. This information enables consumers to compare the energy use or efficiency of competing models.[2] When initially published in 1979,[3] the Rule applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission subsequently expanded the Rule's coverage to include central air conditioners, heat pumps, fluorescent lamp ballasts, plumbing products, lighting products, pool heaters, and some other types of water heaters.[4]

Congress enacted the Energy Policy Act of 2005 (''EPACT 2005'') directing the Commission to require energy labeling for ceiling fans.[5] Pursuant to this directive, on June 21, 2006, the Commission published a notice of proposed rulemaking (''NPRM'') seeking public comment on proposed fan labeling requirements (71 FR 35584). Before discussing the comments received in response to the NPRM and the Commission's final requirements for ceiling fan labeling, this Notice describes the provisions of EPACT 2005, ceiling fan uses, ENERGY STAR specifications, and existing state labeling programs.

A. Energy Policy Act of 2005

Section 137 of EPACT 2005 (Pub. L. No. 109–58 (2005)) amends EPCA to include new requirements related to ceiling fans. Section 324(a)(2)(G)(i) of EPCA (42 U.S.C. 6294(a)(2)(G)(i)) requires the Commission to ''issue, by rule, in accordance with this section, labeling requirements for the electricity used by ceiling fans to circulate air in a room.'' The statute also directs the Department of Energy (''DOE'') to prescribe test procedures and energy conservation standards for ceiling fans.[6] (See 42 U.S.C. 6293(b)(16) and 42 U.S.C. 6295(v)). According to EPACT 2005, the test procedure for ceiling fans must be based on the ''ENERGY STAR Testing Facility Guidance Manual: Building a Testing Facility and Performing the Solid State Test Method for ENERGY STAR Qualified Ceiling Fans, Version 1.1'' (''ENERGY STAR Guidance Manual'') published by the Environmental Protection Agency (EPA). (42 U.S.C. 6293(b)(16)). However, in issuing testing and conservation standards, DOE may exempt or set different standards for certain product classes if the primary standards are not technically feasible or economically justified. DOE may also establish separate or exempted product classes for highly decorative fans for which air movement performance is a secondary design feature. (42 U.S.C. 6295(v)). DOE published a final test procedure for ceiling fans on December 8, 2006 (71 FR 71430) based on the ENERGY STAR Guidance Manual.

In developing labeling rules for products covered by EPCA (such as ceiling fans), the Commission must follow the requirements set out in section 324(c) (42 U.S.C. 6294(c)).[7] Under section 324(c), labels must disclose the estimated annual operating cost determined in accordance with DOE test procedures unless otherwise indicated in the law. The Commission, however, may require a different measure of energy consumption if DOE determines that the cost disclosure is not technologically feasible or the Commission determines such a disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. (42 U.S.C. 6294(c)(1)(A)). In addition, labels must disclose information about the range of operating costs (or a different measure of energy consumption if required by the Commission). (42 U.S.C. 6294(c)(1)(B)). The Commission's labeling rules also must include a description of the applicable type or class of covered product, information about the range of operating costs (or energy use), a description of applicable test procedures, a prototype label, and directions for displaying the label. (42 U.S.C. 6294(c)(2)).

Additionally, EPCA authorizes the Commission to require the disclosure of energy information found on the label in any printed material displayed or distributed at the point of sale. (42 U.S.C. 6293(c)(4)). The Commission also may direct manufacturers to provide additional energy-related disclosures on the label (or information shipped with the product), including instructions for the maintenance, use, or repair of the

[1] 42 U.S.C. 6294.

[2] More information about the Rule can be found at *http://www.ftc.gov/appliances*.

[3] 44 FR 66466 (Nov. 19, 1979).

[4] *See* 52 FR 46888 (Dec. 10, 1987) (central air conditioners); 59 FR 49556 (Sept. 28, 1994) (pool heaters); 54 FR 28031 (July 5, 1989) (fluorescent lamp ballasts); 58 FR 54955 (Oct. 25, 1993) (certain plumbing products); and 59 FR 25176 (May 13, 1994) (lighting products).

[5] Section 137 of EPACT 2005 (Pub. L. 109–58 (2005)).

[6] EPACT 2005 (42 U.S.C. 6295(ff)) further directs DOE to require that all ceiling fans manufactured after January 1, 2007 have fan speed controls separate from any lighting controls, adjustable speed controls (either more than one speed or variable speed), and reversible fan action capability (except for some exempted categories).

[7] EPACT 2005 did not amend the list of covered products in EPCA section 322 (42 U.S.C. 6292) to include the new products added by the legislation such as ceiling fans, exit signs, and torchieres. Nevertheless, language elsewhere in EPACT 2005 (*e.g.*, section 137(b)) makes it clear that Congress intended to treat these items as covered products. Accordingly, the Commission believes that ceiling fans are subject to EPCA requirements for covered products, such as energy range disclosures on labels required by section 324(c) and the reporting requirements of section 326(b).

covered product. (42 U.S.C. 6293(c)(5)). Finally, section 326(b) of EPCA contains certain reporting requirements for covered products. (42 U.S.C. 6296).

B. Ceiling Fan Uses

According to DOE, 69.6 million U.S. households (or 65.1%) had ceiling fans in 2001.[8] Ceiling fans can improve the comfort of a home by circulating air to create a draft throughout a room. For homes using air conditioning, a ceiling fan allows consumers to raise the thermostat setting about 4°F with no reduction in comfort. In temperate climates, or during moderately hot weather, ceiling fans may allow consumers to avoid using air conditioning altogether. A larger fan blade provides comparable cooling at a lower velocity than a smaller blade. DOE recommends a 36- or 44-inch diameter fan to cool a room of up to 225 square feet, while fans that are 52 inches or more should be used in larger rooms.[9] In the winter, by reversing the blade direction and operating at low speed, ceiling fans can provide a gentle updraft, which forces warm air near the ceiling down into the occupied space.[10]

C. ENERGY STAR Specifications

As mentioned above, the statute requires manufacturers to derive the energy information on ceiling fan labels from DOE tests, which must be based on the ENERGY STAR Guidance Manual. The ENERGY STAR program, administered by EPA and DOE, is a voluntary government labeling program that identifies high efficiency products. Ceiling fans that move air at least 20% more efficiently, on average, than standard models qualify for the ENERGY STAR label. The program also has minimum airflow and airflow efficiency requirements for qualifying models.[11]

ENERGY STAR requires participating manufacturers to conduct tests and self-certify those product models that meet the ENERGY STAR guidelines. Manufacturers must derive airflow and airflow efficiency measurements using the Solid State Test Method as defined in the ENERGY STAR Guidance Manual.[12] Under this method, testing personnel place the fan above a large diameter tube in a standard temperature and humidity-controlled room. The air delivered by the fan passes through the tunnel where velocity sensors mounted on a rotating arm measure the airflow at various points. ENERGY STAR directs manufacturers to measure efficiency at each of three fan speeds (low, medium, and high). For example, to meet ENERGY STAR standards, at low speed, fans must have a minimum airflow of 1,250 CFM and an efficiency of 155 CFM/Watt and, at high speed, fans must have a minimum airflow of 5,000 CFM and an efficiency of 75 CFM/Watt. ENERGY STAR also requires manufacturers to label the packages of qualifying products with airflow, fan power, consumption, and airflow efficiency at three operating speeds.

D. California Energy Commission

In addition to the ENERGY STAR specifications and test method, the State of California has requirements for ceiling fans. Under the California regulations, each ceiling fan package must display, in characters no less than 1/4 inch high, the unit's airflow (in CFM) and airflow efficiency (in CFM/Watt) at low, medium, and high speeds. The requirements only apply to fans with diameters of 50 inches or greater. (Cal. Code Regs. tit. 20, § 1607(d)(7)). California regulations do not specify the necessary test procedures.

II. Summary of Final Rule Requirements

Consistent with the Commission's June 21, 2006 NPRM, the Final Rule requires ceiling fan manufacturers to label their product packages with: (1) The fan's airflow at high speed in CFM; (2) the fan's power consumption in watts at high speed; (3) the fan's airflow efficiency in CFM/Watt at high speed; and (4) a range of airflow efficiencies at high speed for standard-sized fans on the market as published by the Commission. To obtain this information, manufacturers will have to test their fans pursuant the procedures required by DOE Appendix U to Subpart B of 10 CFR part 430. The Final Rule requires manufacturers to provide this information on a label affixed to the product packaging as well as in paper and online catalogs. The Rule also requires manufacturers to submit reports to the Commission with high speed airflow, power consumption, and airflow efficiency information for the applicable models pursuant to EPCA's reporting requirements. (42 U.S.C. 6296). By statute, the Rule does not apply to fans produced before January 1, 2009.

III. Final Rule Issues and Comments Received on Proposed Rule

The Commission received four comments in response to its June 21, 2006 NPRM.[13] Generally, the comments supported the FTC's proposed requirements. The Commission has made a few minor changes to the proposed rule based on comments and additional information. In general, however, the Final Rule is substantially similar to that proposed in the NPRM. The following sections describe the changes made to the proposed rule, concerns raised by the comments, and other issues related to the final requirements.

A. Changes to Proposed Rule

The Commission has made six minor changes to the proposed language. First, we added a sentence to the reporting requirements in § 305.8(a)(1) to clarify that efficiency ratings, electricity consumption, and capacity for ceiling fans must be provided at high speed and that manufacturers must report fan size (measured by diameter in inches). Second, we have added a sentence to the description of the term ''ceiling fan'' in section 305.5 to clarify that the Rule does not apply to products for which DOE has no test procedure. Third, we included efficiency range information in § 305.11(g)(1)(E)&(F). Fourth, in response to comments, we clarified § 305.11(g)(2) to indicate that the label's text shall be black with a white background and clarified that the term ''placement'' refers to placement of text within the label. Fifth, § 305.11(g) in the Final Rule indicates that the label's text size and content, and the order of the required disclosures shall be consistent with Ceiling Fan Label Illustration of Appendix L of Part 305. Sixth, we have changed the language in the catalog requirement in § 305.14 to clarify that the required information must be disclosed clearly and conspicuously.

B. Test Procedures

Under EPCA (42 U.S.C. 6294(c)), manufacturers must determine the energy performance of their products pursuant to standard DOE test

[8] See Energy Information Administration, Office of Energy Markets and End Use, 2001 Residential Energy Consumption Survey, *http://www.eia.doe.gov/emeu/recs/ceilingfans/ceiling_fan.html*.

[9] See *http://www.eere.energy.gov/consumer/your_home/space_heating_cooling/index.cfm/mytopic=12355*.

[10] See *http://www.energystar.gov/index.cfm?c=ceiling_fans.pr_ceiling_fans_usage*.

[11] Airflow is the rate of air movement at a specific fan setting expressed in cubic feet per minute (''CFM''). Airflow efficiency is the ratio of airflow divided by power consumed by the motor and controls at a specific ceiling fan setting expressed in CFM per watt (''CFM/Watt'').

[12] ENERGY STAR Testing Facility Guidance Manual, Version 1.1 (Dec. 9, 2002).

[13] American Lighting Association (''ALA'') (09/08/2006) #523596–00003; People's Republic of China (''PRC'') (09/08/2006) #523596–00001; Hunter Fan Company (''Hunter Fan'') (09/11/2006) #523596–00002; and The Home Depot (10/23/06) (late-filed) #523596–00005.

procedures.[14] As mentioned earlier in this Notice, DOE published final test procedures for ceiling fans on December 8, 2006. (71 FR 71340). EPACT 2005 directs the Commission to issue a labeling rule within 18 months after the Act's passage and also indicates that such labeling rules cannot be applied to products manufactured before January 1, 2009. (42 U.S.C. 6294(a)(2)(G)). Accordingly, in compliance with EPACT 2005, the Commission is issuing the Rule now with an effective date of January 1, 2009.

C. Operating Costs

Section 324(c) of EPCA (42 U.S.C. 6294(c)) requires that labels for covered products contain operating-cost information unless the Commission determines that such a disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible. As discussed in the NPRM, the Commission believes that annual operating costs are not likely to assist consumers because ceiling fan use is likely to vary significantly depending on factors such as climate, household heating and cooling systems, and individual use. We also note that the DOE test procedure does not contain sufficient information to allow manufacturers to calculate annual operating costs. No comments raised objections to the Commission's proposal in this regard. Accordingly, the Final Rule does not require operating costs on ceiling fans.

D. Content of Label

In the NPRM, the Commission proposed using three descriptors, each of which provides different information about the fan. Electricity use (in watts) provides information about the power drawn by the fan and allows consumers to compare the fan's energy use to other household items such as light bulbs. Electricity use information also provides an idea of how much the fan will cost to operate because the higher the wattage, the higher the operating costs. Electricity use does not, however, provide information about the amount of air the fan can move. For example, a fan that uses very little electricity may not create air movement adequate for a consumer's needs.

The Commission' NPRM, therefore, also proposed requiring that each label contain airflow and airflow efficiency information. The airflow rating describes the fan's capacity, that is, the amount of air the fan will move in CFM—the greater the CFM, the more air the model will move. The airflow efficiency, expressed in CFM/Watt indicates the amount of air the product will move for each watt of electricity used. This efficiency information describes the relationship between the product's energy use and its output, not necessarily the electricity used by the product. In its comments, Hunter Fan agreed that the three proposed descriptors are required to provide ''consumers with the necessary information to make an informed purchase.'' It noted that CFM information is necessary because it provides consumers with information about whether a particular model will move sufficient air for large rooms. No comments opposed these disclosures.

Based on the comments and the reasoning detailed above, the Commission continues to believe that all three disclosures should be included on the label. As discussed in the NPRM, the use of a single descriptor does not appear to be adequate because each single descriptor fails, by itself, to convey sufficient information to explain fully the product's energy performance. As discussed above, electricity use does not provide information about fan output. Similarly, the efficiency rating is not necessarily an accurate predictor of the fan's electricity consumption or its operating cost. Where there is significant variation in the airflow of competing models, the label should not suggest that high efficiency necessarily equates with cost savings.[15] Accordingly, the Commission is requiring the inclusion of all three pieces of information on the label.

The Final Rule also limits the disclosures to high-speed settings in order to simplify the information on the label.[16] The Commission expects that the information at high speed will be adequate to allow consumers to compare the efficiency rating and power consumed by competing models. The inclusion of information for other speed settings would clutter the label with few additional benefits. In its comments, Hunter Fan Company indicated that ''showing total wattage used on high speed is a good general comparison tool for consumers to understand the electricity used relative to other devices in the home.'' It also observed ''that as long as the ceiling fan has a high CFM/Watt rating, then the fan will be more efficient on whichever speed is used.'' The ALA explained that high speed is ''the true unregulated performance of the fan'' and that capacitors, inserted by manufacturers to control medium and low speeds, are set at values determined by each individual manufacturer. In addition, as proposed in the NPRM, the label must contain a money-saving tip reminding consumers to turn off their fans when they leave a room.[17] No comments opposed the content of the proposed label disclosures.

E. Additional Performance Information (Including ENERGY STAR Information)

Under the Final Rule, manufacturers have the discretion to provide additional energy information elsewhere on the package or in marketing information. This information could include airflow efficiencies, power consumption in watts, and airflow at other speeds as long as such information is adequately substantiated and fairly represents the results of the applicable test procedure. To ensure that all fan packages feature a uniform energy label, however, the Rule limits the information allowed on the required label. A uniform label on every ceiling fan package should make it easier for consumers to locate and compare information for different models as they shop.

Both Hunter Fan and ALA supported the proposal to require a consistent, uniform label. ALA, however, noted that ENERGY STAR-qualified fans are currently marked with an energy performance label required by the ENERGY STAR program. ALA urged that manufacturers be able to use the ENERGY STAR label on qualified products, in lieu of the FTC label. An exception for such a large portion of the market, however, would dilute the benefits of a uniform label. It may also imply to some consumers that fans bearing the FTC label are lower in efficiency, which may not be the case given the voluntary nature of the ENERGY STAR program. In addition, the absence of the FTC-required label on

[14] In its comments, the PRC suggested that the required test method should be international standard IEC 60879–1986 and raised additional questions about the test procedure. EPCA charges DOE with the responsibility for setting test procedures. In the case of ceiling fans, Congress has mandated that DOE base its test on the existing ENERGY STAR procedure.

[15] Because airflow efficiency is the ratio of airflow (*i.e.*, fan strength) to power consumption, a less efficient model may deliver less air but, at the same time, use less electricity and thus cost less to operate. For example, a model with an efficiency rating of 100 CFM/Watt, 6,000 CFM airflow, and 60 watts power consumption will use more electricity and thus cost more to operate than a fan with a lower efficiency rating of 91 CFM/Watt, 5,000 CFM airflow, and power consumption of 55 watts.

[16] We have added a sentence to the reporting requirements in § 305.8(a)(1) to clarify that efficiency ratings, electricity consumption, and capacity for ceiling fans must be provided at high speed.

[17] This is intended to help consumers understand that fans provide no cooling benefit in an unoccupied room.

ENERGY STAR fans could create general confusion because some models would have the FTC label and others would not. Accordingly, the Final Rule does not exempt ENERGY STAR models. Manufacturers who choose to participate in ENERGY STAR can continue to provide the ENERGY STAR performance data elsewhere on the product package in accord with the ENERGY STAR guidelines.

F. Efficiency Ranges

In its NPRM, the Commission sought comment on the range of efficiency numbers that should be used in the statement proposed on the label (*e.g.*, ''Compare: 49'' to 60'' ceiling fans have airflow efficiencies ranging from approximately __to__ cubic feet per minute per watt at high speed.''). The Commission proposed to include two separate ranges in the Rule, one for fans with blade sizes between 36'' to 48'' and another for 49'' to 60.'' Unfortunately, the comments did not provide data that could be used to develop such ranges. The Commission staff, therefore, has reviewed data from several sources, including online information from the California Energy Commission (*http://www.energy.ca.gov/appliances/appliance/index.html*), EPA's ENERGYSTAR program (*http://www.energystar.gov/index.cfm?c=ceiling_fans.pr_ceiling_fans*), and various manufacturer and retail websites. Based on this data, the Commission is publishing the following ranges for placement on the label: 71 to 86 CFM/Watt at high speed for fans with blade sizes between 36'' to 48'' and 51 to 176 CFM/Watt at high speed for fans with blade sizes between 49'' to 60'' ceiling fans. (See §§ 305.11(g)(1)(E)&(F)). The Commission will revisit these ranges if data submissions in the future indicate that the required ranges are substantially different than the ranges of efficiency used by fans in the marketplace.

In its comments, the PRC suggested that the energy efficiency range should be dynamic and published periodically. As stated in the NPRM, the Commission did not propose a detailed system of range information because it is unclear whether such information would provide consumer benefits commensurate with the costs associated with the necessary label changes. The Commission has not reviewed evidence that would change this view. As discussed above, however, the Commission will consider changes in the future if the actual efficiency ranges of products in the market place diverge substantially from the published ranges.

G. Location of Label

Under the Final Rule, manufacturers must place the ceiling fan label on product packages rather than on the products themselves. This requirement should assist consumers shopping in retail stores. Both Hunter Fan and ALA agreed. Hunter Fan explained that consumers would have a difficult time reading labels affixed to the products themselves because floor models are typically positioned in the store eight to nine feet off the floor. The PRC suggested that the money-saving tip on the label be placed on the ceiling fan's switch box. This suggestion raises cost, feasibility, and consistency questions that have not been explored in this proceeding. Accordingly, we are not requiring such marking in the Final Rule. We note, however, that nothing prohibits manufacturers from marking their products with this information voluntarily.

H. Size and Format Requirements

The NPRM proposed certain size and format requirements for the label. As with the proposed rule, the Final Rule requires that the label must be at least four inches wide and three inches high. Under the Final Rule, the text font shall be Arial or another equivalent font, and the label's text size and content, and the order of the required disclosures shall be consistent with Ceiling Fan Label Illustration of Appendix L of Part 305.[18] The proposed rule did not specify the background color for the label. ALA suggested that, ''for labels integrated into the carton's printing plate, the nomenclature shall be black on a contrasting background.'' While we understand manufacturers' desire to incorporate background package colors on the label, we believe that this may detract from providing a consistent, recognizable label across all competing models to facilitate comparison shopping. Therefore, we have clarified the Final Rule language to indicate that label must be in black text with a white background.

I. Request for Exemptions

ALA suggested that the Commission grant an exemption for high speed axial ceiling fans with contoured blades and ceiling fans with multiple fan assemblies because the current ENERGY STAR test procedure (which serves as the basis for DOE's procedure) is not a suitable test for these types of products. Similarly, the PRC urged the Commission to exempt highly decorative fans for which air movement is the secondary design feature.

EPACT 2005 provides a definition of ''ceiling fan'' and directs the Commission to issue a labeling rule for products fitting that definition. The statute defines ''ceiling fan'' as ''a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades.'' (42 U.S.C. 6291(49)). We have identified no basis for determining that the model types identified by commenters fall outside of this definition, and the law does not provide the Commission with explicit authority to make wholesale exemptions from the labeling requirement for different types or models of fans that otherwise fall within the statute's definition. Accordingly, the basis for exempting these whole product categories from the labeling rule is at best unclear.

At the same time, the FTC's Rule requires that manufacturers test their products using the DOE-approved procedure. In some cases, that procedure may not be appropriate because it may not be possible to test certain fan types under the required test apparatus or required conditions. In other cases, the test may yield energy information that is not a valid source of comparison across fan types. Labeling in these circumstances could yield confusing or misleading results for consumers or could simply be impossible. Therefore, if DOE determines that its test procedure does not apply to certain types or models of ceiling fans, then the Commission will not expect manufacturers to label those products.[19] The final definition of ''ceiling fan'' indicates that the requirements of the rule are limited to those ceiling fans for which the Department of Energy has adopted and published test procedures for measuring energy usage. The Commission itself, however, is not issuing labeling exemptions for any ceiling fan types or models at this time.

J. Catalog Disclosures

Section 305.14 of the Rule currently requires that any manufacturer, distributor, retailer, or private labeler who advertises a covered product in a catalog, including a website, must provide the information required by

[18] The proposed rule indicated that the sample illustration in the Appendix provided ''suggested'' font sizes. The language in the Final Rule provides more definitive instructions for preparing the label and should help ensure that the label is consistent in appearance from product to product.

[19] We note that the statute authorizes DOE to issue exemptions for certain product classes if the primary standards are not technically feasible or economically justified and to establish separate or exempted product classes for highly decorative fans for which air movement performance is a secondary design feature. (42 U.S.C. 6295(v)).

section 305.11(g)(1) (*i.e.*, airflow, electricity usage, airflow efficiency, and range information) on the website and in the catalogs. Because ceiling fans are covered products, the Final Rule amends these catalog requirements to include ceiling fans. Pursuant to the Final Rule, the required information should appear on each page that lists the covered product (see § 305.14(e)).[20]

K. Reporting Requirements

Consistent with EPCA (42 U.S.C. 6296), the NPRM contained certain reporting requirements for ceiling fans consistent with those applicable to other products covered by the Rule. For example, the statute requires manufacturers to submit annual reports to the FTC listing energy data for each model under current production (42 U.S.C. 6296(b)(4)).

Consistent with the proposed rule, the Final Rule will require manufacturers to submit: Information on the energy efficiency of ceiling fans, the model numbers for each basic model, the total energy consumed, the number of tests performed, and the capacity (*i.e.*, cubic feet per minute). The Rule also requires the submission of an annual report for all models under production on March 1st of each year (beginning in 2009). In addition, pursuant to section 305.8(c) of the Rule, manufacturers must submit data for new models prior to their distribution. The Final Rule contains an additional sentence in 305.8(a)(1) clarifying that manufacturers must report the diameter of models in inches and efficiency ratings, electricity consumption, and capacity at high speed. The diameter information (*i.e.*, fan-blade size) will allow the FTC to group the fan data into the range of comparability categories established by the Rule (*e.g.*, 49 to 60 inch fans).

The PRC asked several questions related to the process for the submission of data to the FTC. The FTC staff provides guidance regarding the submission of data at *http://www.ftc.gov/bcp/conline/edcams/eande/faq.htm.* The FTC accepts data submissions in a variety of formats, including paper and email. Most manufacturers submit data via email using the spreadsheet files provided by the staff at the website. In addition, under the FTC's Rule, it is not necessary to obtain third-party accreditation.

L. Miscellaneous Issues

ALA urged that the Commission exempt ceiling fans intended for export. We note that EPCA's consumer labeling requirements (and thus the Rule's requirements) do not apply to covered products manufactured for export and identified as such (see 42 U.S.C. 6300). ALA also mentioned that some models may have different motors because many manufacturers have multiple sources of supply for a given model. ALA asked whether the multiple sources of information should be disclosed to the consumer. Under the Rule, manufacturers must test and label each model following DOE standard test procedures. As a general matter, the energy performance of models sold on the market should be consistent with the results of the models tested. Section 305.6 of the Commission's Rule requires that any representation with respect to energy consumption measures derived from the DOE test must be based upon DOE's sampling procedures set forth in 10 CFR 430.24, subpart B.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA''), as amended, 44 U.S.C. 3501, *et seq.*, the Commission submitted the proposed Rule to the Office of Management and Budget (''OMB'') for review. OMB approved the Rule's information collection requirements through August 31, 2009 (OMB Control No. 3084–0069). Changes made to the Rule subsequent to publication of the NPRM have not affected the Commission's previous burden estimate. Nonetheless, as discussed below, the Commission has revised its previous burden estimate based on data available from the California Energy Commission and the ENERGY STAR program, as well as, a comment received from ALA. As required by the PRA, the Commission has submitted its revised burden estimate to OMB for review.

As set forth in the NPRM, the Rule contains disclosure and reporting requirements that constitute ''information collection requirements'' as defined by 5 CFR 1320.7(c), the regulation that implements the Paperwork Reduction Act (''PRA'').[21] Specifically, the Rule expands the scope of pre-existing recordkeeping, labeling, and reporting requirements to include manufacturers for a product not previously covered, ceiling fans.

The Commission's burden estimates are based on census data, Department of Energy figures and estimates, general knowledge of manufacturing practices, and trade association advice and figures. Because the burden of compliance falls almost entirely on manufacturers and importers (with a *de minimis* burden relating to retailers), the Commission has calculated the burden estimates based on the number of ceiling fan units shipped domestically.

Annual Hours Burden

The Commission estimates that there are 2,500 basic models (*i.e.*, units with essentially identical functional physical and electrical characteristics) of ceiling fans sold in the U.S.[22] Consistent with reporting estimates for other products covered by the Rule, the Commission estimates that the average reporting burden for manufacturers will be approximately two minutes per basic model. Accordingly, the estimated annual reporting burden for ceiling fans is approximately 83 hours (2 minutes × 2,500 models ÷ 60 minutes per hour).

With regard to labeling burdens, manufacturers will require approximately four minutes to create a label for each basic model. Thus, the approximate annual drafting burden involved in labeling is 167 hours per year [2,500 basic models × four minutes (average drafting time per basic model) ÷ 60 minutes per hour]. In addition, the Commission estimates that it will take, on average, six seconds to place labels on the packaging of each unit. Based on 2004 U.S. census data, the Commission estimates that there are approximately 6,000,000 ceiling fan units shipped each year in the U.S. Thus, the annual burden for affixing labels to ceiling fans is approximately 10,000 hours [six (seconds) × 6,000,000 (the total products shipped in 2004) divided by 3,600 (seconds per hour)]. Accordingly, the total annual labeling burden would be approximately 10,167 hours.

With regard to testing burdens, manufacturers will require approximately three hours to test each new basic model. The FTC estimates that, on average, 50% of the total basic models are tested each year. Accordingly, the estimated annual testing burden would be approximately 3,750 hours [1 hour × 3 (average number of tests run per model) × 1,250 (50% of 2,500 basic models)].[23]

The Rule also requires ceiling fan manufacturers to keep records of test data generated in performing the tests to derive information included on labels. The Commission estimates that it will take ceiling fan manufacturers one

[20] We have also changed the language in the catalog requirement in § 305.14 to clarify that the required information must be disclosed clearly and conspicuously.

[21] 44 U.S.C. 3501–3520.

[22] The Commission's previous estimate of basic models as stated in the NPRM (1,500) has been modified to reflect ceiling fan data available from the California Energy Commission and the ENERGY STAR program.

[23] The Commission's previous estimate of two fan tests per model has been increased to three tests per model based on comments provided by ALA.

minute per record (*i.e.*, per model) to store the data. Accordingly, the estimated annual recordkeeping burden would be approximately 42 hours (1 minute × 2,500 basic models ÷ 60 minutes per hour).

In addition, the Rule requires sellers offering ceiling fan products through retail sales catalogs (*i.e.*, those publications from which a consumer can actually order merchandise) to disclose energy information for each fan model in the catalog. Because this information is supplied by the product manufacturers, the burden on the retailer consists of incorporating the information into the catalog presentation.

Based upon staff research concerning the number of manufacturers and online retailers of ceiling fans, the Commission estimates that there are an additional 200 catalog sellers of ceiling fans (paper catalogs and online sellers) who are subject to the Rule's catalog disclosure requirements. The Commission estimates that these sellers each require approximately 17 hours per year to incorporate the data into their catalogs. This estimate is based on the assumption that entry of the required information takes on average one minute per covered product and an assumption that the average online catalog contains approximately 1,000 covered products. Given that there is great variety among sellers in the volume of products that they offer online, it is very difficult to estimate such numbers with precision. In addition, this analysis assumes that information for all 1,000 products is entered into the catalog each year. This is a conservative assumption because the number of incremental additions to the catalog from year to year is likely to be much lower after initial start-up efforts have been completed. Thus, the total annual disclosure burden for all catalog sellers of ceiling fans covered by the Rule is 3,400 hours (200 sellers × 17 hours annually).

Thus, the Commission now estimates that the total annual burden due to the inclusion of ceiling fans under the scope of the Rule will be 17,000 hours (83 hours for reporting + 167 hours for drafting labels + 10,000 hours for affixing labels + 3,750 hours for testing + 42 hours for recordkeeping + 3,400 disclosure hours for catalog sellers), rounded to the nearest thousand.[24]

Annual Labor Costs

The Commission has derived labor costs by applying appropriate estimated hourly cost figures to the burden hours described above. In calculating the cost figures, the FTC assumes that test procedures, recordkeeping and reporting, marking, and preparation of fact sheets are conducted by electrical engineers at an hourly rate of $40.59.[25] In addition, we assume labeling will be conducted by skilled clerical personnel at an hourly rate of $14.21.

Based on the above estimates and assumptions, the total annual labor cost for the five different categories of burden under the Rule, applied to ceiling fans, is derived as follows: (1) annual testing labor cost is approximately $152,213 (3,750 hours × $40.59 (electrical engineer wage category)); and (2) annual labor costs for recordkeeping, reporting, and catalog disclosures are approximately $149,858 (3,692 hours × $40.59 (electrical engineer wage category)); and (3) annual labor cost for labeling will be $142,100 (10,000 hours × $14.21 (skilled clerical wage category)).[26] Thus, the total annual labor cost is approximately $444,000 rounded to the nearest thousand.

Annual Non-labor Costs

In its previous submission to OMB, Commission staff examined the five distinct burdens imposed by the proposed Rule—testing, reporting, recordkeeping, labeling, and retail catalog disclosures—as they affect non-labor costs incurred by manufacturers and catalog sellers of ceiling fans. The manufacturers and retailers who make the required disclosures in catalogs already are producing catalogs in the ordinary course of business; accordingly, capital costs associated with such disclosures would be *de minimis*. Nonetheless, ceiling fan manufacturers that submit required reports to the Commission directly (rather than through trade associations) incur some nominal costs for paper and postage. Ceiling fan manufacturers must also incur the cost of procuring labels. The Commission retains staff's previous estimate that ceiling fan manufacturers will incur approximately $420,500 for such costs.[27] However, as discussed below, the Commission has decided to revise staff's previous non-labor cost estimate to take into account additional costs associated with testing.

The ALA comment indicated ceiling-fan manufacturers will contract with third-party labs to test their products. According to ALA, manufacturers incur a testing cost of $1,785 per ceiling fan at such labs. The Commission believes this calculation overestimates the cost because it does not account for price adjustments based on high-volume testing orders, and it assumes that all manufacturers will use third-party labs.[28] Therefore, the Commission estimates that manufacturers will incur testing costs of $1,000 per ceiling fan. The Commission further estimates that approximately $120 of that cost is attributed to labor.[29] Accordingly, the Commission estimates that the average annual non-labor cost associated with testing will be $1,100,000 [($880 (non-labor test cost per fan) × 1,250 (number of basic models tested per year)].

ALA's comment also indicated that manufacturers must dispose of tested units. Assuming that, on average, 50% of the basic models are tested each year, the Commission estimates that the annual capital cost of disposal to be $750,000 ($200 disposal cost per fan × 3 tests per fan × 1,250 basic models tested each year). ALA also indicated that manufacturers incur costs for shipping fans to third party test labs at an average of $9 per model. Although such costs are not incurred by manufacturers which do their own testing, the Commission conservatively estimates that the cost for shipping fans to third-party test labs will be $11,250 ($9 per fan × 1,250 models).

Accordingly, the total annual non-labor cost imposed by the Rule, as applied to ceiling fans, will be approximately $2,282,000, rounded to

[24] This is a 2,000 hour increase from the Commission's previous burden estimate as stated in the NPRM.

[25] The ALA comment indicated that all recordkeeping, reporting, and fact sheet preparation will be conducted by engineering personnel at a rate of $40.59 per hour. The hourly rate of $40.59 is based on data recently released by the U.S. Department of Labor's Bureau of Labor Statistics. See *http://www.bls.gov/ncs/ocs/sp/ncbl0757.pdf.* Accordingly, the Commission has modified its previous assumption that such work would be conducted by skilled technical personnel at an hourly rate of $29.40.

[26] In response to the NPRM, ALA further commented that a cost estimate for testing from one of the three certified facilities is $1,785 per fan. The Commission assumes that labor costs make up only a portion of this estimate. Accordingly, the additional cost for testing proposed by ALA is addressed in the non-labor costs section of this document.

[27] This estimate is comprised of an estimated 6 million ceiling fan units shipped in the U.S. each year (based on 2004 U.S. census data) at an average cost of seven cents per label plus approximately $500 in nominal paper and postage costs.

[28] At least one large ceiling fan manufacturer has its own testing facility. See *http://www.energystar.gov/ia/partners/manuf_res/cflabs.pdf.*

[29] As discussed above, the Commission estimates manufacturers will require approximately three hours to test each new basic model. Assuming an electrical engineer performs the test at an hourly wage rate of $40.59, the Commission estimates that approximately $120 of the total testing cost incurred by ceiling fan manufacturers is appropriately categorized as a labor cost.

the nearest thousand ($420,000 for procuring labels + $500 for nominal paper and postage costs + $1,100,000 for testing + $750,000 for disposal costs + $11,250 for shipping to third-party test labs).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the Final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603–605.

The Commission believes it likely that the amendments will not have a significant economic impact on a substantial number of small entities. The Commission estimates that these requirements will apply to about 95 ceiling-fan manufacturers and an additional 200 online and paper catalog sellers of ceiling fans. We expect that about two-thirds of these entities will qualify as small businesses under the relevant thresholds (i.e., 750 or fewer employees). As detailed in the previous section of this notice, the requirements will impose testing, recordkeeping, and labeling requirements on affected entities. The Commission expects that, in some cases, the Rule will have significant impact on individual small businesses, particularly those that manufacturer a large number of different fan models. The actual number of small businesses experiencing such impacts, however, is not likely to be substantial.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. Although the Commission certifies under the RFA that the Rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed Rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Need For and Objectives of the Rule

The Federal Trade Commission is charged with enforcing the requirements of 42 U.S.C. 6294, which require the agency to issue this Rule. The objective of the proposed Rule is to establish energy labeling requirements for the movement of air by ceiling fans. Section 137 of EPACT 2005 amends section 324 of EPCA to require the Commission to ''issue, by rule, in accordance with this section, labeling requirements for the electricity used by ceiling fans to circulate air in a room.''

B. Significant Issues Raised By Public Comment

No significant issues were raised by public comment related to small business impacts.

C. Small Entities To Which the Final Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, household fan manufacturers qualify as small businesses if they have fewer than 750 employees. The Commission estimates that fewer than 200 entities subject to the proposed Rule's requirements qualify as small businesses.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the labeling rule will involve some increased costs for affected parties. Most of these costs will be in the form of product testing and drafting costs for the label. These costs are detailed in the Paperwork Reduction Act section of this notice. The entities affected will include ceiling fan manufacturers and catalog retailers (including online sellers). The Commission does not expect that there will be any significant legal, professional, or training costs to comply with the Rule. The Commission does not expect that the labeling requirements will impose significant incremental costs for Web sites or other advertising.

E. Alternatives Considered

The provisions of the Rule directly reflect the requirements of the statute, and thus leave little room for significant alternatives to decrease the burden on regulated entities. One commenter, ALA, urged the Commission to accept data from models already tested under the ENERGY STAR program without requiring additional 95% confidence level testing as generally required by DOE. Under the enabling statute, the energy information disclosed on the label must be based on the test procedures in DOE's regulations. If DOE determines that such additional testing is not required or necessary for ENERGY STAR ceiling fans, the Commission will defer to DOE.

VI. Final Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

■ For the reasons set out above, the Commission amends 16 CFR Part 305 as follows:

PART 305—[AMENDED]

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. Amend § 305.2 by revising paragraph (i), revising paragraph (o)(21), and adding paragraph (o)(22) to read as follows:

§ 305.2 Definitions.

* * * * *

(i) *Energy efficiency rating* means the following product-specific energy usage descriptors: *annual fuel utilization efficiency (AFUE)* for furnaces; *energy efficiency ratio (EER)* for room air conditioners; *seasonal energy efficiency ratio (SEER)* for the cooling function of central air conditioners and heat pumps; *heating seasonal performance factor (HSPF)* for the heating function of heat pumps; *airflow efficiency for ceiling fans; and, thermal efficiency (TE)* for pool heaters, as these descriptors are determined in accordance with tests prescribed under section 323 of the Act (42 U.S.C. 6293). These product-specific energy usage descriptors shall be used in satisfying all the requirements of this part.

* * * * *

(o) * * *

(21) Ceiling fans.

(22) Any other type of consumer product which the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

* * * * *

■ 3. Amend § 305.3 by adding paragraph (s) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(s) *Ceiling fan* means a nonportable device that is suspended from a ceiling for circulating air via the rotation of fan blades. The requirements of this part are limited to those ceiling fans for which the Department of Energy has adopted and published test procedures for measuring energy usage.

■ 4. Add § 305.5(a)(11) to read as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

(a) * * *

(11) Ceiling Fans—§ 430.23.

* * * * *

■ 5. Add § 305.7(l) to read as follows:

§ 305.7 Determinations of capacity.

* * * * *

(l) *Ceiling fans.* The capacity shall be the airflow in cubic feet per minute as determined according to appendix U of 10 CFR part 430, subpart B.

■ 6. Amend § 305.8 to revise paragraphs (a)(1) and (b)(1) to read as follows:

§ 305.8 Submission of data.

(a)(1) Each manufacturer of a covered product (except manufacturers of fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps) shall submit annually to the Commission a report listing the estimated annual energy consumption (for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps, furnaces, ceiling fans, and pool heaters) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: the model numbers for each basic model; the total energy consumption, determined in accordance with § 305.5, used to calculate the estimated annual energy consumption or energy efficiency rating; the number of tests performed; and, its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix K illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced on the market. For ceiling fans, the report shall contain the fan diameter in inches and also shall contain efficiency ratings, energy consumption, and capacity at high speed.

* * * * *

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerator-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Room air conditioners	May 1.
Furnaces	May 1.
Pool heaters	May 1.
Clothes washers	Oct. 1.
Fluorescent lamp ballasts	Mar. 1.
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Urinals	Mar. 1.
Ceiling fans	Mar. 1.
Fluorescent lamps	Mar. 1 [Stayed].
Medium Base Compact Fluorescent Lamps	Mar. 1 [Stayed].
Incandescent Lamps, incl. Reflector Lamps	Mar. 1 [Stayed].

* * * * *

■ 7. Revise § 305.10(a) to read as follows:

§ 305.10 Ranges of estimated annual energy consumption and energy efficiency ratings.

(a) The range of estimated annual energy consumption or energy efficiency ratings for each covered product (except fluorescent lamp ballasts, showerheads, faucets, water closets, urinals, or ceiling fans) shall be taken from the appropriate appendix to this rule in effect at the time the labels are affixed to the product. The Commission shall publish revised ranges annually in the **Federal Register**, if appropriate, or a statement that the specific prior ranges are still applicable for the new year. Ranges will be changed if the estimated annual energy consumption or energy efficiency ratings of the products within the range change in a way that would alter the upper or lower estimated annual energy consumption or energy efficiency rating limits of the range by 15% or more from that previously published. When a range is revised, all information disseminated after 90 days following the publication of the revision shall conform to the revised range. Products that have been labeled prior to the effective date of a modification under this section need not be relabeled.

* * * * *

■ 8. Amend § 305.11 by revising paragraph (a)(1) and adding paragraph (g) to read as follows:

§ 305.11 Labeling for covered products.

(a) *Labels for covered products other than fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, urinals, and ceiling fans*—(1) *Layout.* All energy labels for each category of covered product shall use one size, similar colors and typefaces with consistent positioning of headline, copy and charts to maintain uniformity for immediate consumer recognition and readability. Trim size dimensions for all labels shall be as follows: width must be between 5 ¼ inches and 5 ½ inches (13.34 cm. and 13.97 cm.); length must be 7 ⅜ inches (18.73 cm.). Copy is to

be set between 27 picas and 29 picas and copy page should be centered (right to left and top to bottom). Depth is variable but should follow closely the prototype labels appearing at the end of this part illustrating the basic layout. All positioning, spacing, type sizes and line widths should be similar to and consistent with the prototype labels.

* * * * *

(g) *Ceiling Fans*—(1) *Content.* Any covered product that is a ceiling fan shall be labeled clearly and conspicuously on the principal display panel with the following information in order from top to bottom on the label:

(i) The words ''ENERGY INFORMATION'' shall appear at the top of the label with the words ''at High Speed'' directly underneath;

(ii) The product's airflow at high speed expressed in cubic feet per minute and determined pursuant to § 305.5 of this part;

(iii) The product's electricity usage at high speed expressed in watts and determined pursuant to § 305.5 of this part, including the phrase ''excludes lights'' as indicated in Ceiling Fan Label Illustration of Appendix L of this part;

(iv) The product's airflow efficiency rating at high speed expressed in cubic feet per minute per watt and determined pursuant to § 305.5 of this part;

(v) The following statement shall appear on the label for fans fewer than 49 inches in diameter: ''Compare: 36'' to 48'' ceiling fans have airflow efficiencies ranging from approximately 71 to 86 cubic feet per minute per watt at high speed.'';

(vi) The following statement shall appear on the label for fans 49 inches or more in diameter: ''Compare: 49'' to 60'' ceiling fans have airflow efficiencies ranging from approximately 51 to 176 cubic feet per minute per watt at high speed.''; and

(vii) The following statements shall appear at the bottom of the label as indicated in Ceiling Fan Label Illustration of Appendix L of this part: ''Money-Saving Tip: Turn off fan when leaving room.''

(2) *Label Size and Text Font.* The label shall be four inches wide and three inches high. The text font shall be Arial or another equivalent font. The text on the label shall be black with a white background. The label's text size and content, and the order of the required disclosures shall be consistent with Ceiling Fan Label Illustration of Appendix L of this part.

(3) *Placement.* The ceiling fan label shall be printed on the principal display panel of the product's packaging.

(4) *Additional Information:* No marks or information other than that specified in this part shall appear on this label, except a model name, number, or similar identifying information.

■ 9. Add § 305.14(e) to read as follows:

§ 305.14 Catalogs.

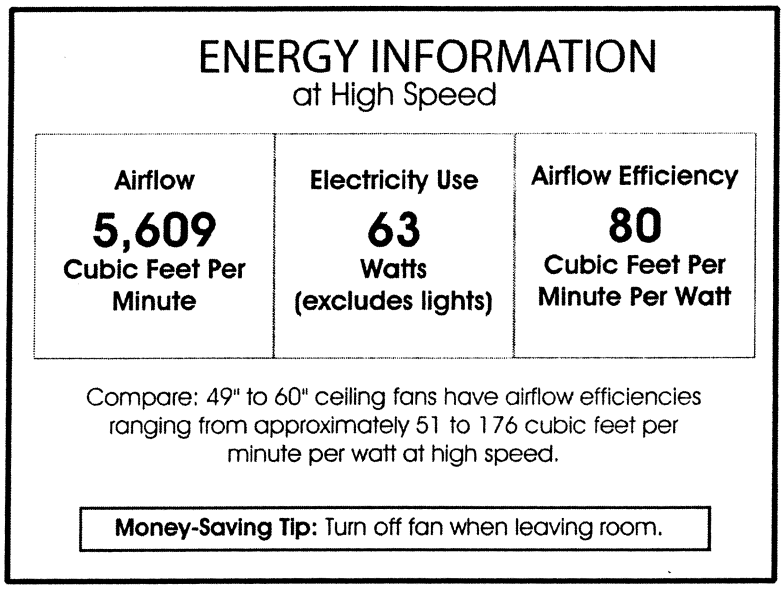
* * * * * *

(e) Any manufacturer, distributor, retailer, or private labeler who advertises a covered product that is a ceiling fan in a catalog, from which it may be purchased, shall disclose clearly and conspicuously in such catalog, on each page that lists the covered product, all the information concerning the product required by § 305.11(g)(1).

■ 10. Amend part 305, Appendix L by adding Ceiling Fan Label Illustration at the end of the appendix to read as follows:

Appendix L to Part 305—Sample Labels

* * * * *



Ceiling Fan Label Illustration

* * * * *

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 06–9901 Filed 12–27–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9307]

RIN 1545–BC18

Changes in Computing Depreciation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to a change in computing depreciation or amortization as well as a change from a nondepreciable or nonamortizable asset to a depreciable or amortizable asset (or vice versa). Specifically, these regulations provide guidance to any taxpayer that makes a change in depreciation or amortization on whether such a change is a change in method of accounting under section 446(e) of the Internal Revenue Code and on the application of section 1016(a)(2) in determining whether the change is a change in method of accounting.

DATES: *Effective Date.* These regulations are effective December 28, 2006.

Applicability Dates. For dates of applicability, see §§ 1.167(e)–1(e), 1.446–1(e)(4), and 1.1016–3(j).

FOR FURTHER INFORMATION CONTACT: Douglas H. Kim, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On January 2, 2004, the IRS and Treasury Department published temporary regulations (TD 9105) in the **Federal Register** (69 FR 5) relating to the application of section 446(e) of the Internal Revenue Code (Code) and § 1.167(e)–1 to a change in depreciation or amortization and the application of section 1016(a)(2) in determining whether a change in depreciation or amortization is a change in method of accounting. On the same date, the IRS published a notice of proposed rulemaking (REG–126459–03) cross-referencing the temporary regulations in the **Federal Register** (69 FR 42). No public hearing was requested or held. Several comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision, and the corresponding temporary regulations are removed. The revisions are discussed here in this preamble.

Section 1400N(d), which was added to the Code by section 101(a) of the Gulf Opportunity Zone Act of 2005, Public Law 109–135 (119 Stat. 2577), generally allows a 50-percent additional first year depreciation deduction for qualified Gulf Opportunity Zone property. The final regulations reflect the enactment of section 1400N(d).

Explanation of Provisions

Scope

The final regulations provide the changes in depreciation or amortization (depreciation) for property for which depreciation is determined under section 167, 168, 197, 1400I, 1400L(b), 1400L(c), or 1400N(d), or former section 168, of the Code that are, and those changes that are not, changes in method of accounting under section 446(e). The final regulations also clarify that the rules in § 1.167(e)–1 with respect to a change in the depreciation method made without the consent of the Commissioner apply only to property for which depreciation is determined under section 167 (other than under section 168, 1400I, 1400L, or 1400N(d), or former section 168). Additionally, the final regulations provide that section 1016(a)(2) does not permanently affect a taxpayer's lifetime income for purposes of determining whether a change in depreciation is a change in method of accounting under section 446(e) and § 1.446–1(e).

I. Changes in Depreciation Method Under Section 167

The final regulations retain the rules contained in the temporary regulations providing that the rules in § 1.167(e)–1 with respect to a change in depreciation method under § 1.167(e)–1(b), (c), and (d) made without the consent of the Commissioner apply only to property for which depreciation is determined under section 167 (other than under section 168, 1400I, 1400L, or 1400N(d), or former section 168). No comments were received suggesting changes to these rules.

II. Changes in Depreciation That Are, and Are Not, a Change in Method of Accounting Under Section 446(e)

The final regulations provide rules on the changes in depreciation that are, and are not, a change in method of accounting under section 446(e).

A. Changes in Depreciation That Are Changes in Method of Accounting

The final regulations retain the rules contained in the temporary regulations providing the changes in depreciation that are a change in method of accounting under section 446(e). These changes are a change in the treatment of an asset from nondepreciable or nonamortizable to depreciable or amortizable, or vice versa. Additionally, a correction to require depreciation in lieu of a deduction for the cost of depreciable or amortizable assets that had been consistently treated as an expense in the year of purchase, or vice versa, is a change in method of accounting. Further, changes in computing depreciation generally are a change in method of accounting, including a change in the depreciation method, period of recovery, or convention of a depreciable or amortizable asset, and a change to or from claiming the additional first year depreciation deduction provided by section 168(k), 1400L(b), or 1400N(d) under certain circumstances.

No comments were received suggesting changes to these rules. However, a commentator inquired whether a calendar-year taxpayer that has not claimed the 30-percent additional first year depreciation for qualified property acquired after September 10, 2001, and placed in service prior to January 1, 2002, may claim the 30-percent additional first year depreciation by requesting a change in method of accounting. To claim the 30-percent additional first year depreciation for this property, Rev. Proc. 2003–50 (2003–2 C.B. 119) provides that the taxpayer had to file an amended return on or before December 31, 2003, or file a Form 3115, ''Application for Change in Accounting Method,'' with the taxpayer's timely filed 2003 Federal tax return. If the taxpayer did not file this amended return or Form 3115, the taxpayer has made the deemed election not to deduct the additional first year depreciation for the 2001 taxable year. Accordingly, the taxpayer's change to claiming the 30-percent additional first year depreciation for qualified property placed in service in the taxable year that included September 11, 2001, is not a change in method of accounting under

the temporary and final regulations. Instead, the taxpayer must file a request for a letter ruling to revoke the election.

Another commentator questioned whether the temporary regulations affected the procedures for obtaining consent to make a change in method of accounting. The regulations did not change these procedures and, accordingly, the rules in § 1.446–1(e)(3) apply to a change in depreciation that is a change in method of accounting. Other commentators inquired whether a change in depreciation due to a posting or mathematical error, or a change in underlying facts, is a change in method of accounting. A change in depreciation due to a posting or mathematical error, or a change in underlying facts, is not a change in method of accounting because the rules in § 1.446–1(e)(2)(ii)(*a*) and (*b*) also apply to a change in depreciation. Accordingly, the final regulations clarify this point.

B. Changes in Depreciation That Are Not Changes in Method of Accounting

The final regulations retain the rule contained in the temporary regulations that a change in method of accounting does not include an adjustment in the useful life of a depreciable or amortizable asset for which depreciation is determined under section 167 (other than under section 168, 1400I, 1400L, or 1400N(d), or former section 168). This rule does not apply, however, if a taxpayer is changing to or from a useful life (or recovery period or amortization period) that is specifically assigned by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin. Several commentators questioned whether the useful life exception from change in method of accounting treatment that was in effect before the issuance of the temporary regulations has any remaining application. Section 1.446–1(e)(2)(ii)(*b*), as in effect before the issuance of the temporary regulations (see § 1.446–1(e) as contained in 26 CFR part 1 edition revised as of April 1, 2003), provided that a change in the method of accounting does not include an adjustment in the useful life of a depreciable asset. The rule still applies but is limited by the temporary and final regulations to only a depreciable or amortizable asset for which depreciation is determined under section 167 (other than under section 168, 1400I, 1400L, or 1400N(d), or former section 168) and to only an adjustment in useful life that is not specifically assigned by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin.

The final regulations also retain the rules contained in the temporary regulations of when an adjustment in useful life that is not a change in method of accounting is implemented. The final regulations clarify that these rules apply regardless of whether the adjustment in useful life is initiated by the IRS or a taxpayer. Furthermore, the final regulations clarify that in implementing an adjustment in useful life that is not a change in method of accounting, no section 481 adjustment is required or permitted.

The final regulations retain the rule contained in the temporary regulations providing that the making of a late depreciation election or the revocation of a timely valid depreciation election is not a change in method of accounting, except as otherwise provided by the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin. A commentator inquired whether a late section 179 election may be made by requesting a change in method of accounting. Under section 179 and the regulations under section 179, a late section 179 election generally is made by submitting a request for a letter ruling. However, for a taxable year beginning after 2002 and before 2010, a taxpayer may make a section 179 election by filing an amended return. Accordingly, the IRS and Treasury Department have included a cross-reference to section 179(c) and § 1.179–5.

The final regulations retain the rule contained in the temporary regulations providing that any change in the placed-in-service date of a depreciable or amortizable asset is not treated as a change in method of accounting. The final regulations, however, clarify that this rule does not apply when the Code, the regulations under the Code, or other guidance published in the Internal Revenue Bulletin, provide that a change in placed-in-service date is treated as a change in method of accounting. A commentator requested that the final regulations clarify what constitutes a change in placed-in-service date. To illustrate the rule, the IRS and Treasury Department provided additional clarification in the final regulations. For example, the final regulations provide that if a taxpayer changes the placed-in-service date of a depreciable or amortizable asset because the taxpayer incorrectly determined the date on which the asset was placed in service, this change is not a change in method of accounting. However, if a taxpayer incorrectly determines that a depreciable or amortizable asset is nondepreciable property and later changes the treatment of the asset to depreciable property, this change is not a change in the placed-in-service date of the asset but is a change from nondepreciable to depreciable property and, therefore, the change is a change in method of accounting. The final regulations also clarify that a change in the convention of a depreciable or amortizable asset is not a change in the placed-in-service date of the asset and, therefore, is a change in method of accounting. Additionally, the final regulations provide examples illustrating what constitutes a change in placed-in-service date.

The final regulations retain the rules contained in the temporary regulations as to how and when a change in placed-in-service date that is not a change in method of accounting is implemented. The final regulations also clarify that these rules apply regardless of whether the change in placed-in-service date is made by the IRS or a taxpayer. Finally, the final regulations provide that in implementing a change in placed-in-service date that is not a change in method of accounting, no section 481 adjustment is required or permitted.

C. Item Being Changed

The final regulations retain the rule contained in the temporary regulations providing that for purposes of a change in depreciation, the item being changed is the depreciation treatment of each individual depreciable or amortizable asset or the depreciation treatment of each vintage account with respect to a depreciable asset for which depreciation is determined under § 1.167(a)–11 (CLADR). Because general asset accounts and mass asset accounts are similar to vintage accounts, the final regulations clarify that the item is the depreciable treatment of each general asset account with respect to a depreciable asset for which general asset account treatment has been elected under section 168(i)(4) or the item is the depreciation treatment of each mass asset account with respect to a depreciable asset for which mass asset account treatment has been elected under former section 168(d)(2)(A). The final regulations also retain the rule contained in the temporary regulations providing that a change in depreciation under section 167 (other than under section 168, 1400I, 1400L, or 1400N(d), or former section 168) is permitted only with respect to all assets in a particular account (as defined in § 1.167(a)–7) or vintage account.

D. Effective Dates

Several commentators questioned the application of the effective date of the temporary regulations. In response, the

IRS, in Chief Counsel Notice 2004–007 (CC–2004–007, January 28, 2004) and Chief Counsel Notice 2004–024 (CC–2004–024, July 12, 2004) (see *www.irs.gov/foia*), clarified that the temporary regulations apply to property placed in service in a taxable year ending on or after December 30, 2003. In accordance with this clarification, the final regulations apply only to a change in depreciation made by a taxpayer for a depreciable or amortizable asset placed in service by the taxpayer in a taxable year ending on or after December 30, 2003, regardless of whether or not the change in depreciation is a change in method of accounting. Additionally, the examples in the final regulations relating to a change in depreciation have been revised to reflect this effective date.

III. Application of Section 1016(a)(2) to a Change in Method of Accounting

The final regulations contain the same rule as the temporary regulations, providing that section 1016(a)(2) does not permanently affect a taxpayer's lifetime income for purposes of determining whether a change in depreciation for property subject to section 167, 168, 1400I, 1400L, or 1400N(d), or former section 168, is a change in method of accounting under section 446(e) and the regulations under section 446(e). No comments were received suggesting changes to this rule.

Special Analyses

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

Drafting Information

The principal author of these regulations is Douglas H. Kim, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.167(e)–1 is amended by revising paragraphs (a) and (e) to read as follows:

§ 1.167(e)-1 Change in method.

(a) *In general.* (1) Any change in the method of computing the depreciation allowances with respect to a particular account (other than a change in method permitted or required by reason of the operation of former section 167(j)(2) and § 1.167(j)–3(c)) is a change in method of accounting, and such a change will be permitted only with the consent of the Commissioner, except that certain changes to the straight line method of depreciation will be permitted without consent as provided in former section 167(e)(1), (2), and (3). Except as provided in paragraphs (c) and (d) of this section, a change in method of computing depreciation will be permitted only with respect to all the assets contained in a particular account as defined in § 1.167(a)–7. Any change in the percentage of the current straight line rate under the declining balance method, for example, from 200 percent of the straight line rate to any other percent of the straight line rate, or any change in the interest factor used in connection with a compound interest or sinking fund method, will constitute a change in method of depreciation. Any request for a change in method of depreciation shall be made in accordance with section 446(e) and the regulations under section 446(e). For rules covering the use of depreciation methods by acquiring corporations in the case of certain corporate acquisitions, see section 381(c)(6) and the regulations under section 381(c)(6).

(2) Paragraphs (b), (c), and (d) of this section apply to property for which depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L(c), under section 168 prior to its amendment by the Tax Reform Act of 1986 (100 Stat. 2121), or under an additional first year depreciation deduction provision (for example, section 168(k), 1400L(b), or 1400N(d))) of the Internal Revenue Code.

* * * * *

(e) *Effective date.* This section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.167(e)–1 in effect prior to December 30, 2003 (§ 1.167(e)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

§ 1.167(e)–1T [Removed]

■ **Par. 3.** Section 1.167(e)–1T is removed.

■ **Par. 4.** Section 1.168(i)–4 is amended as follows:

■ 1. Paragraph (f) is amended by removing the language ''§ 1.446–1T(e)(2)(ii)(*d*)(*3*)(*ii*)'' at the end of the paragraph and adding ''§ 1.446–1(e)(2)(ii)(*d*)(*3*)(*ii*)'' in its place.

■ 2. Paragraph (g)(2)(ii) is amended by removing the language ''as modified by Rev. Proc. 2004–11 (2004–3 I.R.B. 311).''

■ **Par. 5.** Section 1.168(i)–6T is amended as follows:

■ 1. Paragraph (k)(2)(i) is amended by removing the language ''§ 1.446–1T(e)(3)(ii)'' and adding ''§ 1.446–1(e)(3)(ii)'' in its place.

■ 2. The last sentence in paragraph (k)(2)(ii) is amended by removing the language ''§ 1.446–1T(e)(3)(ii)'' and adding ''§ 1.446–1(e)(3)(ii)'' in its place.

■ **Par. 6.** Section 1.446–1 is amended by revising paragraphs (e)(2)(ii)(*a*), (e)(2)(ii)(*b*), (e)(2)(ii)(*d*), (e)(2)(iii), and (e)(4) to read as follows:

§ 1.446–1 General rule for methods of accounting.

* * * * *

(e) * * *

(2) * * *

(ii) (*a*) A change in the method of accounting includes a change in the overall plan of accounting for gross income or deductions or a change in the treatment of any material item used in such overall plan. Although a method of accounting may exist under this definition without the necessity of a pattern of consistent treatment of an item, in most instances a method of accounting is not established for an item without such consistent treatment. A material item is any item that involves the proper time for the inclusion of the item in income or the taking of a deduction. Changes in method of accounting include a change from the cash receipts and disbursement method to an accrual method, or vice versa, a change involving the method or basis used in the valuation of inventories (see sections 471 and 472 and the regulations under sections 471 and 472),

a change from the cash or accrual method to a long-term contract method, or vice versa (see § 1.460–4), certain changes in computing depreciation or amortization (see paragraph (e)(2)(ii)(*d*) of this section), a change involving the adoption, use or discontinuance of any other specialized method of computing taxable income, such as the crop method, and a change where the Internal Revenue Code and regulations under the Internal Revenue Code specifically require that the consent of the Commissioner must be obtained before adopting such a change.

(*b*) A change in method of accounting does not include correction of mathematical or posting errors, or errors in the computation of tax liability (such as errors in computation of the foreign tax credit, net operating loss, percentage depletion, or investment credit). Also, a change in method of accounting does not include adjustment of any item of income or deduction that does not involve the proper time for the inclusion of the item of income or the taking of a deduction. For example, corrections of items that are deducted as interest or salary, but that are in fact payments of dividends, and of items that are deducted as business expenses, but that are in fact personal expenses, are not changes in method of accounting. In addition, a change in the method of accounting does not include an adjustment with respect to the addition to a reserve for bad debts. Although such adjustment may involve the question of the proper time for the taking of a deduction, such items are traditionally corrected by adjustment in the current and future years. For the treatment of the adjustment of the addition to a bad debt reserve (for example, for banks under section 585 of the Internal Revenue Code), see the regulations under section 166 of the Internal Revenue Code. A change in the method of accounting also does not include a change in treatment resulting from a change in underlying facts. For further guidance on changes involving depreciable or amortizable assets, see paragraph (e)(2)(ii)(*d*) of this section and § 1.1016–3(h).

* * * * *

(*d*) *Changes involving depreciable or amortizable assets*—(*1*) *Scope*. This paragraph (e)(2)(ii)(*d*) applies to property subject to section 167, 168, 197, 1400I, 1400L(c), to section 168 prior to its amendment by the Tax Reform Act of 1986 (100 Stat. 2121) (former section 168), or to an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k), 1400L(b), or 1400N(d)).

(*2*) *Changes in depreciation or amortization that are a change in method of accounting*. Except as provided in paragraph (e)(2)(ii)(*d*)(*3*) of this section, a change in the treatment of an asset from nondepreciable or nonamortizable to depreciable or amortizable, or vice versa, is a change in method of accounting. Additionally, a correction to require depreciation or amortization in lieu of a deduction for the cost of depreciable or amortizable assets that had been consistently treated as an expense in the year of purchase, or vice versa, is a change in method of accounting. Further, except as provided in paragraph (e)(2)(ii)(*d*)(*3*) of this section, the following changes in computing depreciation or amortization are a change in method of accounting:

(*i*) A change in the depreciation or amortization method, period of recovery, or convention of a depreciable or amortizable asset.

(*ii*) A change from not claiming to claiming the additional first year depreciation deduction provided by, for example, section 168(k), 1400L(b), or 1400N(d), for, and the resulting change to the amount otherwise allowable as a depreciation deduction for the remaining adjusted depreciable basis (or similar basis) of, depreciable property that qualifies for the additional first year depreciation deduction (for example, qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or qualified Gulf Opportunity Zone property), provided the taxpayer did not make the election out of the additional first year depreciation deduction (or did not make a deemed election out of the additional first year depreciation deduction; for further guidance, for example, see Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–2 C.B. 119), Notice 2006–77 (2006–40 I.R.B. 590), and § 601.601(d)(2)(ii)(*b*) of this chapter) for the class of property in which the depreciable property that qualifies for the additional first year depreciation deduction (for example, qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or qualified Gulf Opportunity Zone property) is included.

(*iii*) A change from claiming the 30-percent additional first year depreciation deduction to claiming the 50-percent additional first year depreciation deduction for depreciable property that qualifies for the 50-percent additional first year depreciation deduction, provided the property is not included in any class of property for which the taxpayer elected the 30-percent, instead of the 50-percent, additional first year depreciation deduction (for example, 50-percent bonus depreciation property or qualified Gulf Opportunity Zone property), or a change from claiming the 50-percent additional first year depreciation deduction to claiming the 30-percent additional first year depreciation deduction for depreciable property that qualifies for the 30-percent additional first year depreciation deduction, including property that is included in a class of property for which the taxpayer elected the 30-percent, instead of the 50-percent, additional first year depreciation deduction (for example, qualified property or qualified New York Liberty Zone property), and the resulting change to the amount otherwise allowable as a depreciation deduction for the property's remaining adjusted depreciable basis (or similar basis). This paragraph (e)(2)(ii)(*d*)(*2*)(*iii*) does not apply if a taxpayer is making a late election or revoking a timely valid election under the applicable additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k), 1400L(b), or 1400N(d)) (see paragraph (e)(2)(ii)(*d*)(*3*)(*iii*) of this section).

(*iv*) A change from claiming to not claiming the additional first year depreciation deduction for an asset that does not qualify for the additional first year depreciation deduction, including an asset that is included in a class of property for which the taxpayer elected not to claim any additional first year depreciation deduction (for example, an asset that is not qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or qualified Gulf Opportunity Zone property), and the resulting change to the amount otherwise allowable as a depreciation deduction for the property's depreciable basis.

(*v*) A change in salvage value to zero for a depreciable or amortizable asset for which the salvage value is expressly treated as zero by the Internal Revenue Code (for example, section 168(b)(4)), the regulations under the Internal Revenue Code (for example, § 1.197–2(f)(1)(ii)), or other guidance published in the Internal Revenue Bulletin.

(*vi*) A change in the accounting for depreciable or amortizable assets from a single asset account to a multiple asset account (pooling), or vice versa, or from one type of multiple asset account (pooling) to a different type of multiple asset account (pooling).

(*vii*) For depreciable or amortizable assets that are mass assets accounted for in multiple asset accounts or pools, a change in the method of identifying

which assets have been disposed. For purposes of this paragraph (e)(2)(ii)(*d*)(*2*)(*vii*), the term *mass assets* means a mass or group of individual items of depreciable or amortizable assets that are not necessarily homogeneous, each of which is minor in value relative to the total value of the mass or group, numerous in quantity, usually accounted for only on a total dollar or quantity basis, with respect to which separate identification is impracticable, and placed in service in the same taxable year.

(*viii*) Any other change in depreciation or amortization as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(*3*) *Changes in depreciation or amortization that are not a change in method of accounting.* Section 1.446–1(e)(2)(ii)(*b*) applies to determine whether a change in depreciation or amortization is not a change in method of accounting. Further, the following changes in depreciation or amortization are not a change in method of accounting:

(*i*) *Useful life.* An adjustment in the useful life of a depreciable or amortizable asset for which depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L(c), former section 168, or an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k), 1400L(b), or 1400N(d))) is not a change in method of accounting. This paragraph (e)(2)(ii)(*d*)(*3*)(*i*) does not apply if a taxpayer is changing to or from a useful life (or recovery period or amortization period) that is specifically assigned by the Internal Revenue Code (for example, section 167(f)(1), section 168(c), section 168(g)(2) or (3), section 197), the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin and, therefore, such change is a change in method of accounting (unless paragraph (e)(2)(ii)(*d*)(*3*)(*v*) of this section applies). See paragraph (e)(2)(ii)(*d*)(*5*)(*iv*) of this section for determining the taxable year in which to correct an adjustment in useful life that is not a change in method of accounting.

(*ii*) *Change in use.* A change in computing depreciation or amortization allowances in the taxable year in which the use of an asset changes in the hands of the same taxpayer is not a change in method of accounting.

(*iii*) *Elections.* Generally, the making of a late depreciation or amortization election or the revocation of a timely valid depreciation or amortization election is not a change in method of accounting, except as otherwise expressly provided by the Internal Revenue Code, the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin. This paragraph (e)(2)(ii)(*d*)(*3*)(*iii*) also applies to making a late election or revoking a timely valid election made under section 13261(g)(2) or (3) of the Revenue Reconciliation Act of 1993 (107 Stat. 312, 540) (relating to amortizable section 197 intangibles). A taxpayer may request consent to make a late election or revoke a timely valid election by submitting a request for a private letter ruling. For making or revoking an election under section 179 of the Internal Revenue Code, see section 179(c) and § 1.179–5.

(*iv*) *Salvage value.* Except as provided under paragraph (e)(2)(ii)(*d*)(*2*)(*v*) of this section, a change in salvage value of a depreciable or amortizable asset is not treated as a change in method of accounting.

(*v*) *Placed-in-service date.* Except as otherwise expressly provided by the Internal Revenue Code, the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin, any change in the placed-in-service date of a depreciable or amortizable asset is not treated as a change in method of accounting. For example, if a taxpayer changes the placed-in-service date of a depreciable or amortizable asset because the taxpayer incorrectly determined the date on which the asset was placed in service, such a change is a change in the placed-in-service date of the asset and, therefore, is not a change in method of accounting. However, if a taxpayer incorrectly determines that a depreciable or amortizable asset is nondepreciable property and later changes the treatment of the asset to depreciable property, such a change is not a change in the placed-in-service date of the asset and, therefore, is a change in method of accounting under paragraph (e)(2)(ii)(*d*)(*2*) of this section. Further, a change in the convention of a depreciable or amortizable asset is not a change in the placed-in-service date of the asset and, therefore, is a change in method of accounting under paragraph (e)(2)(ii)(*d*)(*2*)(*i*) of this section. See paragraph (e)(2)(ii)(*d*)(*5*)(*v*) of this section for determining the taxable year in which to make a change in the placed-in-service date of a depreciable or amortizable asset that is not a change in method of accounting.

(*vi*) Any other change in depreciation or amortization as the Secretary may designate by publication in the **Federal Register** or in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(*4*) *Item being changed.* For purposes of a change in depreciation or amortization to which this paragraph (e)(2)(ii)(*d*) applies, the item being changed generally is the depreciation treatment of each individual depreciable or amortizable asset. However, the item is the depreciation treatment of each vintage account with respect to a depreciable asset for which depreciation is determined under § 1.167(a)–11 (class life asset depreciation range (CLADR) property). Similarly, the item is the depreciable treatment of each general asset account with respect to a depreciable asset for which general asset account treatment has been elected under section 168(i)(4) or the item is the depreciation treatment of each mass asset account with respect to a depreciable asset for which mass asset account treatment has been elected under former section 168(d)(2)(A). Further, a change in computing depreciation or amortization under section 167 (other than under section 168, section 1400I, section 1400L(c), former section 168, or an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k), 1400L(b), or 1400N(d))) is permitted only with respect to all assets in a particular account (as defined in § 1.167(a)–7) or vintage account.

(*5*) *Special rules.* For purposes of a change in depreciation or amortization to which this paragraph (e)(2)(ii)(*d*) applies—

(*i*) *Declining balance method to the straight line method for MACRS property.* For tangible, depreciable property subject to section 168 (MACRS property) that is depreciated using the 200-percent or 150-percent declining balance method of depreciation under section 168(b)(1) or (2), a taxpayer may change without the consent of the Commissioner from the declining balance method of depreciation to the straight line method of depreciation in the first taxable year in which the use of the straight line method with respect to the adjusted depreciable basis of the MACRS property as of the beginning of that year will yield a depreciation allowance that is greater than the depreciation allowance yielded by the use of the declining balance method. When the change is made, the adjusted depreciable basis of the MACRS property as of the beginning of the taxable year is recovered through annual depreciation allowances over the remaining recovery period (for further guidance, see section 6.06 of Rev. Proc.

87–57 (1987–2 C.B. 687) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(*ii*) *Depreciation method changes for section 167 property.* For a depreciable or amortizable asset for which depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L(c), former section 168, or an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k), 1400L(b), or 1400N(d))), see § 1.167(e)–1(b), (c), and (d) for the changes in depreciation method that are permitted to be made without the consent of the Commissioner. For CLADR property, see § 1.167(a)–11(c)(1)(iii) for the changes in depreciation method for CLADR property that are permitted to be made without the consent of the Commissioner. Further, see § 1.167(a)–11(b)(4)(iii)(*c*) for how to correct an incorrect classification or characterization of CLADR property.

(*iii*) *Section 481 adjustment.* Except as otherwise expressly provided by the Internal Revenue Code, the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin, no section 481 adjustment is required or permitted for a change from one permissible method of computing depreciation or amortization to another permissible method of computing depreciation or amortization for an asset because this change is implemented by either a cut-off method (for further guidance, for example, see section 2.06 of Rev. Proc. 97–27 (1997–1 C.B. 680), section 2.06 of Rev. Proc. 2002–9 (2002–1 C.B. 327), and § 601.601(d)(2)(ii)(*b*) of this chapter) or a modified cut-off method (under which the adjusted depreciable basis of the asset as of the beginning of the year of change is recovered using the new permissible method of accounting), as appropriate. However, a change from an impermissible method of computing depreciation or amortization to a permissible method of computing depreciation or amortization for an asset results in a section 481 adjustment. Similarly, a change in the treatment of an asset from nondepreciable or nonamortizable to depreciable or amortizable (or vice versa) or a change in the treatment of an asset from expensing to depreciating (or vice versa) results in a section 481 adjustment.

(*iv*) *Change in useful life.* This paragraph (e)(2)(ii)(*d*)(*5*)(*iv*) applies to an adjustment in the useful life of a depreciable or amortizable asset for which depreciation is determined under section 167 (other than under section 168, section 1400I, section 1400L(c), former section 168, or an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k), 1400L(b), or 1400N(d))) and that is not a change in method of accounting under paragraph (e)(2)(ii)(*d*) of this section. For this adjustment in useful life, no section 481 adjustment is required or permitted. The adjustment in useful life, whether initiated by the Internal Revenue Service (IRS) or a taxpayer, is corrected by adjustments in the taxable year in which the conditions known to exist at the end of that taxable year changed thereby resulting in a redetermination of the useful life under § 1.167(a)–1(b) (or if the period of limitation for assessment under section 6501(a) has expired for that taxable year, in the first succeeding taxable year open under the period of limitation for assessment), and in subsequent taxable years. In other situations (for example, the useful life is incorrectly determined in the placed-in-service year), the adjustment in the useful life, whether initiated by the IRS or a taxpayer, may be corrected by adjustments in the earliest taxable year open under the period of limitation for assessment under section 6501(a) or the earliest taxable year under examination by the IRS but in no event earlier than the placed-in-service year of the asset, and in subsequent taxable years. However, if a taxpayer initiates the correction in useful life, in lieu of filing amended Federal tax returns (for example, because the conditions known to exist at the end of a prior taxable year changed thereby resulting in a redetermination of the useful life under § 1.167(a)–1(b)), the taxpayer may correct the adjustment in useful life by adjustments in the current and subsequent taxable years.

(*v*) *Change in placed-in-service date.* This paragraph (e)(2)(ii)(*d*)(*5*)(*v*) applies to a change in the placed-in-service date of a depreciable or amortizable asset that is not a change in method of accounting under paragraph (e)(2)(ii)(*d*) of this section. For this change in placed-in-service date, no section 481 adjustment is required or permitted. The change in placed-in-service date, whether initiated by the IRS or a taxpayer, may be corrected by adjustments in the earliest taxable year open under the period of limitation for assessment under section 6501(a) or the earliest taxable year under examination by the IRS but in no event earlier than the placed-in-service year of the asset, and in subsequent taxable years. However, if a taxpayer initiates the change in placed-in-service date, in lieu of filing amended Federal tax returns, the taxpayer may correct the placed-in-service date by adjustments in the current and subsequent taxable years.

(iii) *Examples.* The rules of this paragraph (e) are illustrated by the following examples:

Example 1. Although the sale of merchandise is an income producing factor, and therefore inventories are required, a taxpayer in the retail jewelry business reports his income on the cash receipts and disbursements method of accounting. A change from the cash receipts and disbursements method of accounting to the accrual method of accounting is a change in the overall plan of accounting and thus is a change in method of accounting.

Example 2. A taxpayer in the wholesale dry goods business computes its income and expenses on the accrual method of accounting and files its Federal income tax returns on such basis except for real estate taxes which have been reported on the cash receipts and disbursements method of accounting. A change in the treatment of real estate taxes from the cash receipts and disbursements method to the accrual method is a change in method of accounting because such change is a change in the treatment of a material item within his overall accounting practice.

Example 3. A taxpayer in the wholesale dry goods business computes its income and expenses on the accrual method of accounting and files its Federal income tax returns on such basis. Vacation pay has been deducted in the year in which paid because the taxpayer did not have a completely vested vacation pay plan, and, therefore, the liability for payment did not accrue until that year. Subsequently, the taxpayer adopts a completely vested vacation pay plan that changes its year for accruing the deduction from the year in which payment is made to the year in which the liability to make the payment now arises. The change for the year of deduction of the vacation pay plan is not a change in method of accounting but results, instead, because the underlying facts (that is, the type of vacation pay plan) have changed.

Example 4. From 1968 through 1970, a taxpayer has fairly allocated indirect overhead costs to the value of inventories on a fixed percentage of direct costs. If the ratio of indirect overhead costs to direct costs increases in 1971, a change in the underlying facts has occurred. Accordingly, an increase in the percentage in 1971 to fairly reflect the increase in the relative level of indirect overhead costs is not a change in method of accounting but is a change in treatment resulting from a change in the underlying facts.

Example 5. A taxpayer values inventories at cost. A change in the basis for valuation of inventories from cost to the lower of cost or market is a change in an overall practice of valuing items in inventory. The change, therefore, is a change in method of accounting for inventories.

Example 6. A taxpayer in the manufacturing business has for many taxable years valued its inventories at cost. However, cost has been improperly computed since no overhead costs have been included in valuing

the inventories at cost. The failure to allocate an appropriate portion of overhead to the value of inventories is contrary to the requirement of the Internal Revenue Code and the regulations under the Internal Revenue Code. A change requiring appropriate allocation of overhead is a change in method of accounting because it involves a change in the treatment of a material item used in the overall practice of identifying or valuing items in inventory.

Example 7. A taxpayer has for many taxable years valued certain inventories by a method which provides for deducting 20 percent of the cost of the inventory items in determining the final inventory valuation. The 20 percent adjustment is taken as a ''reserve for price changes.'' Although this method is not a proper method of valuing inventories under the Internal Revenue Code or the regulations under the Internal Revenue Code, it involves the treatment of a material item used in the overall practice of valuing inventory. A change in such practice or procedure is a change of method of accounting for inventories.

Example 8. A taxpayer has always used a base stock system of accounting for inventories. Under this system a constant price is applied to an assumed constant normal quantity of goods in stock. The base stock system is an overall plan of accounting for inventories which is not recognized as a proper method of accounting for inventories under the regulations. A change in this practice is, nevertheless, a change of method of accounting for inventories.

Example 9. In 2003, A1, a calendar year taxpayer engaged in the trade or business of manufacturing knitted goods, purchased and placed in service a building and its components at a total cost of $10,000,000 for use in its manufacturing operations. A1 classified the $10,000,000 as nonresidential real property under section 168(e). A1 elected not to deduct the additional first year depreciation provided by section 168(k) on its 2003 Federal tax return. As a result, on its 2003, 2004, and 2005 Federal tax returns, A1 depreciated the $10,000,000 under the general depreciation system of section 168(a), using the straight line method of depreciation, a 39-year recovery period, and the mid-month convention. In 2006, A1 completes a cost segregation study on the building and its components and identifies items that cost a total of $1,500,000 as section 1245 property. As a result, the $1,500,000 should have been classified in 2003 as 5-year property under section 168(e) and depreciated on A1's 2003, 2004, and 2005 Federal tax returns under the general depreciation system, using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*i*) of this section, A1's change to this depreciation method, recovery period, and convention is a change in method of accounting. This method change results in a section 481 adjustment. The useful life exception under paragraph (e)(2)(ii)(*d*)(*3*)(*i*) of this section does not apply because the assets are depreciated under section 168.

Example 10. In 2003, B, a calendar year taxpayer, purchased and placed in service new equipment at a total cost of $1,000,000 for use in its plant located outside the United States. The equipment is 15-year property under section 168(e) with a class life of 20 years. The equipment is required to be depreciated under the alternative depreciation system of section 168(g). However, B incorrectly depreciated the equipment under the general depreciation system of section 168(a), using the 150-percent declining balance method, a 15-year recovery period, and the half-year convention. In 2010, the IRS examines B's 2007 Federal income tax return and changes the depreciation of the equipment to the alternative depreciation system, using the straight line method of depreciation, a 20-year recovery period, and the half-year convention. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*i*) of this section, this change in depreciation method and recovery period made by the IRS is a change in method of accounting. This method change results in a section 481 adjustment. The useful life exception under paragraph (e)(2)(ii)(*d*)(*3*)(*i*) of this section does not apply because the assets are depreciated under section 168.

Example 11. In May 2003, C, a calendar year taxpayer, purchased and placed in service equipment for use in its trade or business. C never held this equipment for sale. However, C incorrectly treated the equipment as inventory on its 2003 and 2004 Federal tax returns. In 2005, C realizes that the equipment should have been treated as a depreciable asset. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*) of this section, C's change in the treatment of the equipment from inventory to a depreciable asset is a change in method of accounting. This method change results in a section 481 adjustment.

Example 12. Since 2003, D, a calendar year taxpayer, has used the distribution fee period method to amortize distributor commissions and, under that method, established pools to account for the distributor commissions (for further guidance, see Rev. Proc. 2000–38 (2000–2 C.B. 310) and § 601.601(d)(2)(ii)(*b*) of this chapter). A change in the accounting of distributor commissions under the distribution fee period method from pooling to single asset accounting is a change in method of accounting pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*vi*) of this section. This method change results in no section 481 adjustment because the change is from one permissible method to another permissible method.

Example 13. Since 2003, E, a calendar year taxpayer, has accounted for items of MACRS property that are mass assets in pools. Each pool includes only the mass assets that are placed in service by E in the same taxable year. E is able to identify the cost basis of each asset in each pool. None of the pools are general asset accounts under section 168(i)(4) and the regulations under section 168(i)(4). E identified any dispositions of these mass assets by specific identification. Because of changes in E's recordkeeping in 2006, it is impracticable for E to continue to identify disposed mass assets using specific identification. As a result, E wants to change to a first-in, first-out method under which the mass assets disposed of in a taxable year are deemed to be from the pool with the earliest placed-in-service year in existence as of the beginning of the taxable year of each disposition. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*vii*) of this section, this change is a change in method of accounting. This method change results in no section 481 adjustment because the change is from one permissible method to another permissible method.

Example 14. In August 2003, F, a calendar year taxpayer, purchased and placed in service a copier for use in its trade or business. F incorrectly classified the copier as 7-year property under section 168(e). F elected not to deduct the additional first year depreciation provided by section 168(k) on its 2003 Federal tax return. As a result, on its 2003 and 2004 Federal tax returns, F depreciated the copier under the general depreciation system of section 168(a), using the 200-percent declining balance method of depreciation, a 7-year recovery period, and the half-year convention. In 2005, F realizes that the copier is 5-year property and should have been depreciated on its 2003 and 2004 Federal tax returns under the general depreciation system using a 5-year recovery period rather than a 7-year recovery period. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*)(*i*) of this section, F's change in recovery period from 7 to 5 years is a change in method of accounting. This method change results in a section 481 adjustment. The useful life exception under paragraph (e)(2)(ii)(*d*)(*3*)(*i*) of this section does not apply because the copier is depreciated under section 168.

Example 15. In 2004, G, a calendar year taxpayer, purchased and placed in service an intangible asset that is not an amortizable section 197 intangible and that is not described in section 167(f). G amortized the cost of the intangible asset under section 167(a) using the straight line method of depreciation and a determinable useful life of 13 years. The safe harbor useful life of 15 or 25 years under § 1.167(a)–3(b) does not apply to the intangible asset. In 2008, because of changing conditions, G changes the remaining useful life of the intangible asset to 2 years. Pursuant to paragraph (e)(2)(ii)(*d*)(*3*)(*i*) of this section, G's change in useful life is not a change in method of accounting because the intangible asset is depreciated under section 167 and G is not changing to or from a useful life that is specifically assigned by the Internal Revenue Code, the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin.

Example 16. In July 2003, H, a calendar year taxpayer, purchased and placed in service ''off-the-shelf'' computer software and a new computer. The cost of the new computer and computer software are separately stated. H incorrectly included the cost of this software as part of the cost of the computer, which is 5-year property under section 168(e). On its 2003 Federal tax return, H elected to depreciate its 5-year property placed in service in 2003 under the alternative depreciation system of section 168(g) and H elected not to deduct the additional first year depreciation provided by section 168(k). The class life for a computer is 5 years. As a result, because H included the cost of the computer software as part of the cost of the computer hardware, H

depreciated the cost of the software under the alternative depreciation system, using the straight line method of depreciation, a 5-year recovery period, and the half-year convention. In 2005, H realizes that the cost of the software should have been amortized under section 167(f)(1), using the straight line method of depreciation, a 36-month useful life, and a monthly convention. H's change from 5-years to 36-months is a change in method of accounting because H is changing to a useful life that is specifically assigned by section 167(f)(1). The change in convention from the half-year to the monthly convention also is a change in method of accounting. Both changes result in a section 481 adjustment.

Example 17. On May 1, 2003, I2, a calendar year taxpayer, purchased and placed in service new equipment at a total cost of $500,000 for use in its business. The equipment is 5-year property under section 168(e) with a class life of 9 years and is qualified property under section 168(k)(2). I2 did not place in service any other depreciable property in 2003. Section 168(g)(1)(A) through (D) do not apply to the equipment. I2 intended to elect the alternative depreciation system under section 168(g) for 5-year property placed in service in 2003. However, I2 did not make the election. Instead, I2 deducted on its 2003 Federal tax return the 30-percent additional first year depreciation attributable to the equipment and, on its 2003 and 2004 Federal tax returns, depreciated the remaining adjusted depreciable basis of the equipment under the general depreciation system under 168(a), using the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. In 2005, I2 realizes its failure to make the alternative depreciation system election in 2003 and files a Form 3115, ''Application for Change in Accounting Method,'' to change its method of depreciating the remaining adjusted depreciable basis of the 2003 equipment to the alternative depreciation system. Because this equipment is not required to be depreciated under the alternative depreciation system, I2 is attempting to make an election under section 168(g)(7). However, this election must be made in the taxable year in which the equipment is placed in service (2003) and, consequently, I2 is attempting to make a late election under section 168(g)(7). Accordingly, I2's change to the alternative depreciation system is not a change in accounting method pursuant to paragraph (e)(2)(ii)(*d*)(*3*)(*iii*) of this section. Instead, I2 must submit a request for a private letter ruling under § 301.9100–3 of this chapter, requesting an extension of time to make the alternative depreciation system election on its 2003 Federal tax return.

Example 18. On December 1, 2004, J, a calendar year taxpayer, purchased and placed in service 20 previously-owned adding machines. For the 2004 taxable year, J incorrectly classified the adding machines as items in its ''suspense'' account for financial and tax accounting purposes. Assets in this suspense account are not depreciated until reclassified to a depreciable fixed asset account. In January 2006, J realizes that the cost of the adding machines is still in the suspense account and reclassifies such cost to the appropriate depreciable fixed asset account. As a result, on its 2004 and 2005 Federal tax returns, J did not depreciate the cost of the adding machines. Pursuant to paragraph (e)(2)(ii)(*d*)(*2*) of this section, J's change in the treatment of the adding machines from nondepreciable assets to depreciable assets is a change in method of accounting. The placed-in-service date exception under paragraph (e)(2)(ii)(*d*)(*3*)(*v*) of this section does not apply because the adding machines were incorrectly classified in a nondepreciable suspense account. This method change results in a section 481 adjustment.

Example 19. In December 2003, K, a calendar year taxpayer, purchased and placed in service equipment for use in its trade or business. However, K did not receive the invoice for this equipment until January 2004. As a result, K classified the equipment on its fixed asset records as being placed in service in January 2004. On its 2004 and 2005 Federal tax returns, K depreciated the cost of the equipment. In 2006, K realizes that the equipment was actually placed in service during the 2003 taxable year and, therefore, depreciation should have began in the 2003 taxable year instead of the 2004 taxable year. Pursuant to paragraph (e)(2)(ii)(*d*)(*3*)(*v*) of this section, K's change in the placed-in-service date of the equipment is not a change in method of accounting.

* * * * *

(4) *Effective date*—(i) *In general.* Except as provided in paragraphs (e)(3)(iii) and (e)(4)(ii) of this section, paragraph (e) of this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.446–1(e) in effect prior to December 30, 2003 (§ 1.446–1(e) as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(ii) *Changes involving depreciable or amortizable assets.* With respect to paragraph (e)(2)(ii)(*d*) of this section, paragraph (e)(2)(iii) *Examples 9* through *19* of this section, and the language ''certain changes in computing depreciation or amortization (see paragraph (e)(2)(ii)(*d*) of this section)'' in the last sentence of paragraph (e)(2)(ii)(*a*) of this section—

(A) For any change in depreciation or amortization that is a change in method of accounting, this section applies to such a change in method of accounting made by a taxpayer for a depreciable or amortizable asset placed in service by the taxpayer in a taxable year ending on or after December 30, 2003; and

(B) For any change in depreciation or amortization that is not a change in method of accounting, this section applies to such a change made by a taxpayer for a depreciable or amortizable asset placed in service by the taxpayer in a taxable year ending on or after December 30, 2003.

§ 1.446–1T [Removed]

■ **Par. 7.** Section 1.446–1T is removed.

■ **Par. 8.** Section 1.1016–3 is amended by revising paragraphs (h) and (j) to read as follows:

§ 1.1016–3 Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913.

* * * * *

(h) *Application to a change in method of accounting.* For purposes of determining whether a change in depreciation or amortization for property subject to section 167, 168, 197, 1400I, 1400L(c), to section 168 prior to its amendment by the Tax Reform Act of 1986 (100 Stat. 2121) (former section 168), or to an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k), 1400L(b), or 1400N(d)) is a change in method of accounting under section 446(e) and the regulations under section 446(e), section 1016(a)(2) does not permanently affect a taxpayer's lifetime income.

* * * * *

(j) *Effective date*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, this section applies on or after December 30, 2003. For the applicability of regulations before December 30, 2003, see § 1.1016–3 in effect prior to December 30, 2003 (§ 1.1016–3 as contained in 26 CFR part 1 edition revised as of April 1, 2003).

(2) *Depreciation or amortization changes.* Paragraph (h) of this section applies to a change in depreciation or amortization for property subject to section 167, 168, 197, 1400I, 1400L(c), to former section 168, or to an additional first year depreciation deduction provision of the Internal Revenue Code (for example, section 168(k), 1400L(b), or 1400N(d)) for taxable years ending on or after December 30, 2003.

§ 1.1016–3T [Removed]

■ **Par. 9.** Section 1.1016–3T is removed.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: December 21, 2006.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 06–9892 Filed 12–22–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 300

[TD 9306]

RIN 1545–BF69

User Fees for Processing Installment Agreements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains amendments to the regulations relating to user fees for installment agreements. The amendments update the fees to reflect the actual costs of the services provided and create an exception to the increased fee for entering into installment agreements for low-income taxpayers. The amendments affect taxpayers who wish to pay their liabilities through installment agreements.

DATES: *Effective Date:* These regulations are effective on December 28, 2006.

Applicability Date: These regulations apply to installment agreements entered into, restructured, or reinstated on or after January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Concerning cost methodology, Eva Williams, 202–435–5514; concerning the regulations, William Beard, 202–622–3620 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 300. On August 30, 2006, a notice of proposed rulemaking (REG–148576–05) relating to the user fees charged for processing installment agreements was published in the **Federal Register** (71 FR 51538). The charging of user fees implements the Independent Offices Appropriations Act (IOAA), which is codified at 31 U.S.C. 9701. The notice of proposed rulemaking proposed an increase in the amount of the user fees to reflect the full cost of the service provided, as directed by OMB Circular A–25, 58 FR 38142 (July 15, 1993) (the OMB Circular).

The notice of proposed rulemaking proposed to increase the fee under § 300.1 for entering into an installment agreement from $43 to $105 and to increase the fee under § 300.2 for restructuring an installment agreement from $24 to $45. The notice of proposed rulemaking also proposed an exception to the full-cost requirement in cases where the taxpayer chooses to pay by way of a direct debit from the taxpayer's bank account. The OMB Circular allows the Office of Management and Budget to grant a waiver of the full cost requirement and, pursuant to such a waiver, the proposed fee for entering into a direct-debit agreement was $52 to encourage this type of payment.

No public hearing on the notice of proposed rulemaking was held because no one requested to speak. Eight comments were received. After consideration of all the comments, this Treasury decision adopts the proposed regulations with the following change: the fee for entering into an installment agreement will remain $43 for low-income taxpayers, that is, taxpayers whose incomes fall at or below 250% of the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services or such other measure as the Secretary may adopt. The IRS sought and received an additional waiver from OMB to charge less than full cost to low-income taxpayers.

Summary of Comments and Explanation of Revisions

Of the eight comments on the proposed regulations, five stated that the increased fees would have an adverse impact on low-income taxpayers. Other commentators stated that many low-income taxpayers do not have bank accounts and cannot take advantage of the reduced fee for direct-debit installment agreements. To accommodate these concerns, the final regulations except low-income taxpayers from the increase of the fee for entering into an installment agreement. Therefore the fee for entering into an installment agreement remains $43 for low-income taxpayers, that is, taxpayers whose income fall at or below 250% of the dollar poverty criteria established by the U.S. Department of Health and Human Services. The exception does not apply to the fee for restructuring or reinstating an installment agreement.

Other commentators recommended that the installment agreement user fee be reduced for any taxpayer who requests an agreement on-line (over the internet). Under the IOAA, user fees should be fair and based on the costs to the government, the value of the service to the recipient, and the public policy or interest served. No exception was created for installment agreements requested on-line because the benefit of the installment agreement program to the taxpayer does not change depending on the how the installment agreement is requested, the convenience of on-line requests provides ample incentive for this type of application for taxpayers who have internet access, and taxpayers who do not have internet access could not take advantage of the lower fee. The IRS intends to consider a cost methodology for installment agreement user fees that reflects cost differences attributable to various types of installment agreements, as well as whether additional exceptions to full cost are warranted.

Special Analyses

It has been determined that this notice of rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This certification is based on the information that follows. The economic impact of these regulations on any small entity would result from the entity being required to pay a fee prescribed by these regulations in order to obtain a particular service. The dollar amount of the fee is not, however, substantial enough to have a significant economic impact on any entity subject to the fee. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Although the Administrative Procedures Act prescribes a thirty-day waiting period between the date of publication in the **Federal Register** and the applicability date, this regulation is being made applicable after a shorter period under the authority provided by section 7805(b)(1)(B).

Drafting Information

The principal author of these regulations is William Beard, Office of Associate Chief Counsel (Procedure and Administration), Collection, Bankruptcy and Summonses Division.

Lists of Subjects in 26 CFR Part 300

Reporting and recordkeeping requirements, User fees.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 300 is amended as follows:

PART 300—USER FEES

■ **Paragraph 1.** The authority citation for part 300 continues to read as follows:

Authority: 31 U.S.C. 9701.

■ **Par. 2.** Section 300.0 is amended by revising paragraph (c) to read as follows:

§ 300.0 User fees; in general.

* * * * *

(c) *Effective date.* This part 300 is applicable March 16, 1995, except that the user fee for processing offers in compromise is applicable November 1, 2003; the user fee for the special enrollment examination, enrollment, and renewal of enrollment for enrolled agents is applicable November 6, 2006; the user fee for entering into installment agreements on or after January 1, 2007, is applicable January 1, 2007; and the user fee for restructuring or reinstatement of an installment agreement on or after January 1, 2007, is applicable January 1, 2007.

■ **Par. 3.** Section 300.1 is amended by revising paragraph (b) to read as follows:

§ 300.1 Installment agreement fee.

* * * * *

(b) *Fee.* The fee for entering into an installment agreement before January 1, 2007, is $43. The fee for entering into an installment agreement on or after January 1, 2007, is $105, except that:

(1) The fee is $52 when the taxpayer pays by way of a direct debit from the taxpayer's bank account; and

(2) Notwithstanding the method of payment, the fee is $43 if the taxpayer is a low-income taxpayer, that is, an individual who falls at or below 250% of the dollar criteria established by the poverty guidelines updated annually in the **Federal Register** by the U.S. Department of Health and Human Services under authority of section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 357, 511), or such other measure that is adopted by the Secretary.

* * * * *

■ **Par. 4.** Section 300.2 is amended by revising paragraph (b) to read as follows:

§ 300.2 Restructuring or reinstatement of installment agreement fee.

* * * * *

(b) *Fee.* The fee for restructuring or reinstating an installment agreement before January 1, 2007, is $24. The fee for restructuring or reinstating an installment agreement on or after January 1, 2007, is $45.

* * * * *

Kevin M. Brown,

Acting Deputy Commissioner for Services and Enforcement.

Approved: December 21, 2006.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–22257 Filed 12–27–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682 and 685

RIN 1840–AC88

Federal Perkins Loan Program, Federal Family Education Loan Program, and William D. Ford Federal Direct Loan Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final regulations, request for comments.

SUMMARY: The Secretary is amending the Federal Perkins Loan (Perkins Loan) Program, Federal Family Education Loan (FFEL) Program, and William D. Ford Federal Direct Loan (Direct Loan) Program regulations to implement the changes to the Higher Education Act of 1965, as amended (HEA), resulting from the enactment of the Third Higher Education Extension Act of 2006 (THEEA), Public Law 109–292. These interim final regulations reflect the provisions of the THEEA that authorize the discharge of the outstanding balance of certain Perkins, FFEL, and Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks.

DATES: *Effective Date:* These interim final regulations are effective January 29, 2007.

Comment date: The Department must receive any comments on or before January 29, 2007.

Information collection compliance date: Affected parties do not have to comply with the information collection requirements in §§ 674.64, 682.407, and 685.218 until the Department publishes in the **Federal Register** the control numbers assigned by the Office of Management and Budget (OMB) to these information collection requirements. Publication of the control numbers notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

ADDRESSES: Address all comments about these interim final regulations to Mr. Brian Smith, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 502–7551 or via the Internet at: *Brian.Smith@ed.gov.*

If you prefer to deliver your comments by hand or by using a courier service or commercial carrier, address your comments to: Mr. Brian Smith, 1990 K Street, NW., room 8082, Washington, DC 20006–8542.

If you prefer to send your comments through the Internet, you may address them to us at: *DischargeComments@ed.gov.* Or you may send them to us at the U.S. Government Web site: *http://www.regulations.gov.* You must include the term ''Discharge Interim Final Comments'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: For provisions related to the FFEL and Federal Perkins Loan Programs: Mr. Brian Smith, U.S. Department of Education, 1990 K Street, NW., 8th Floor, Washington, DC 20006. Telephone: (202) 502–7551 or via the Internet at: *Brian.Smith@ed.gov.* For provisions related to the Federal Direct Loan Program: Mr. Jon Utz, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5345. Telephone: (202) 377–4008 or via the Internet at: *Jon.Utz@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On September 30, 2006, Congress enacted the THEEA, Public Law 109–292. The changes made by the THEEA include:

- Restrictions on the use of eligible lender trustees by higher education institutions that make FFEL Loans. Under the THEEA, as of January 1, 2007, the FFEL lending activities of institutions of higher education and organizations affiliated with institutions of higher education through eligible lender trustee arrangements will be subject to certain restrictions that apply to institutions of higher education acting as lenders directly in the FFEL Program;
- New discharge provisions for Title IV, HEA student loans for the survivors

of eligible public servants and certain other eligible victims of the terrorist attacks on the United States on September 11, 2001;

- A technical modification to the HEA provision governing account maintenance fees that are paid to guaranty agencies in the FFEL Program; and
- Modifications to the requirements for an institution to receive a grant under the Hispanic Serving Institutions Program authorized by Title V of the HEA.

These interim final regulations implement only the statutory changes in section 6 of the THEEA that establish new discharges in the Title IV, HEA student loan programs for the survivors of victims of the terrorist attacks on September 11, 2001.

Significant Regulations

Discharge of Student Loan Indebtedness for Survivors of Victims of the September 11, 2001, Attacks (§§ 674.64, 682.407, and 685.218)

Statute: Section 6 of the THEEA amended the HEA by authorizing the discharge of the obligation of a borrower to make further payments on an eligible Perkins, FFEL or Direct Loan if the borrower is a survivor of an eligible public servant or other eligible victim of the September 11, 2001, terrorist attacks. The discharge is authorized only for a Perkins, FFEL or Direct Loan on which amounts were owed on September 11, 2001, or Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001. Amounts must still be owed on the loan on the day the discharge is requested. The THEEA does not authorize a refund of payments made by a borrower prior to the date the loan is discharged.

Current Regulations: The current Perkins, FFEL, and Direct Loan Program regulations do not reflect the new loan discharge provisions for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks.

New Regulations: New §§ 674.64, 682.407, and 685.218 have been added to the Perkins, FFEL, and Direct Loan Program regulations, respectively, to reflect the THEEA provisions authorizing a loan discharge for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks.

For the purpose of this new loan discharge, an *eligible public servant* is defined in the program regulations as an individual who served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces who died or became permanently and totally disabled due to injuries suffered in terrorist attacks on September 11, 2001. The term *eligible victim* is defined as an individual who died or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

The interim final regulations specify, consistent with section 6(b) of the THEEA, that the survivor of an eligible public servant can qualify for loan discharge, including the discharge of any portion of a joint Consolidation Loan that was used to repay the spouse's Title IV, student loan, only if the survivor is the spouse of the eligible public servant.

The interim final regulations, consistent with section 6(b)(1)(B), (C), and (D) of the THEEA, also authorize loan discharge for spouses and eligible parents of eligible victims (other than public servants). An *eligible parent* is defined as the parent of an eligible victim if the parent owes a parent PLUS Loan incurred on behalf of that eligible victim, or owes a Consolidation Loan that repaid a parent PLUS Loan incurred on behalf of that eligible victim.

For spouses of eligible victims other than eligible public servants, the interim final regulations provide, consistent with section 6(b)(1)(B) of the THEEA, for the discharge of the portion of a joint Consolidation Loan that was incurred on behalf of the eligible victim. To qualify for a discharge, in the case of a discharge based on the permanent and total disability of the eligible public servant or the eligible victim, the borrower and the public servant or victim must still be married. In the case of a discharge based on the death of the eligible public servant or eligible victim, the borrower must have been married to the public servant or the victim until the death of the public servant or the victim. For purposes of Federal law, the term ''spouse'' is defined in 1 U.S.C. 7 and does not include an ex-spouse. Thus, the THEEA does not give the Secretary the authority to provide for a loan discharge for an ex-spouse.

The interim final regulations also provide for the discharge of a parent borrower's PLUS Loan (or the portion of a Consolidation Loan that repaid a PLUS Loan) in the event of the death of the eligible victim on whose behalf the PLUS Loan was obtained. Finally, the interim final regulations provide for a discharge of a PLUS Loan (or the portion of a Consolidation Loan that repaid a PLUS Loan) obtained on behalf of an eligible victim who became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

As required by the THEEA, the interim final regulations establish procedures for filing applications for discharges by eligible borrowers. The interim final regulations provide that a borrower's eligibility for a loan discharge will be determined by the holder of the loan: The lender or guarantor for an FFEL Loan; the institution that made the loan for a Perkins Loan; and the Secretary for a Direct Loan. The borrower must use an application approved by the Secretary and provide the documentation required by the interim final regulations.

The regulations require three types of documentation to support a claim that an individual is an eligible public servant or an eligible victim:

- Documentation of the individual's presence at one of the sites of the terrorist attacks on September 11, 2001;
- In the case of an eligible public servant, documentation of the individual's status as a public servant at the time of the attacks; and
- Documentation that the individual's death or permanent and total disability was a direct result of the attacks.

Documentation of an individual's status as a public servant is provided by a certification from an authorized official that the borrower was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel at one of the sites of the terrorist attacks on September 11. This certification is also used to document that the individual was present at one of the sites. For an eligible victim, a certification that the individual was present at one of the sites must be provided.

Under the interim final regulations, documentation of the permanent and total disability of an eligible victim or an eligible public servant must include copies of contemporaneous medical records demonstrating that the victim was treated within 24 hours of the borrower sustaining the injury, or 24 hours of the borrower being rescued. The injury must have been sustained at the time or in the immediate aftermath of the attacks. In addition, the borrower must provide a certification from a physician that the borrower is permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

Documentation of the death of an eligible victim or an eligible public servant is provided by the inclusion of the individual on an official list of individuals who died in the terrorist attacks on September 11, 2001. If the individual didn't die in the attacks, but died later as result of the attacks, documentation requirements include an

original or certified copy of the individual's death certificate, and a certification from a physician or medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

In some cases, substitutions for the documentation discussed above may be used. For example, documentation that an individual's Title IV loans were discharged due to death may be used in lieu of an original or certified copy of a death certificate.

The documentation required by the interim final regulations is necessary to limit the discharge to individuals who meet the statutory eligibility criteria for the discharge. Contemporaneous medical records are necessary to ensure that the individual was injured in the terrorist attacks on September 11, 2001. A certification from a physician that the borrower is permanently and totally disabled as a result of that injury is necessary to ensure that the disability is a result of the terrorist attacks.

Although the documentation requirements for the September 11 survivor's discharge require eligibility of the public servant or the victim, the September 11 survivor's discharge under the THEEA is available only to the spouse or parent of the eligible public servant or the eligible victim. An eligible public servant or an eligible victim is not eligible for a loan discharge under these interim final regulations. A determination by a loan holder that an eligible public servant or an eligible victim is permanently and totally disabled for the purpose of discharging a spouse's or parent's loans does not qualify the eligible public servant or the eligible victim for a total and permanent disability discharge on his or her loans. To obtain a total and permanent disability discharge, an eligible public servant or an eligible victim must apply for a total and permanent disability discharge under the current procedures in §§ 674.61, 682.402, 685.212, and 685.213.

Under those regulations, a borrower who qualifies for a discharge based on a total and permanent disability may be entitled to receive a refund of payments made after the date of disability. Consistent with section 6(e) of the THEEA, a discharge under the interim final regulations provides a discharge only of the outstanding balance of the loan and no refunds are authorized.

In developing these interim final regulations, we relied on the definitions of *immediate aftermath* and *present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* contained in the regulations promulgated to administer the September 11th Victim Compensation Fund of 2001 (the Fund). See 24 CFR Part 104; 66 FR 66273 (Dec. 21, 2001); 67 FR 11233 (March 13, 2002). The documentation required to show that an eligible victim or public servant died or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 closely parallels the documentation required under the Fund regulations. The Fund was created under Title IV of the Air Transportation Safety and System Stabilization Act, Public Law 107–42, which authorized compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the September 11, 2001 terrorist-related aircraft crashes. We determined that the Fund's regulations provided an appropriate basis for several of the new regulatory provisions resulting from the THEEA.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to issuing a final rule. In addition, under section 492 of the HEA, all Department regulations for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements and under section 482 of the HEA, any title IV regulations that have not been published in final form by November 1 prior to the start of an award year cannot become effective until the beginning of the second award year following the November 1 date.

Section 6(f) of the THEEA provides that sections 482(c) and 492 of the HEA shall not apply to any regulations required to implement provisions of the THEEA that authorize the discharge of a title IV, HEA loan for survivors of victims of the September 11, 2001, attacks. The THEEA also requires that procedures for filing an application for loan discharge for survivors of the September 11, 2001, terrorist attacks be prescribed and published by regulation 90 days after the date of enactment or December 29, 2006, without regard to the rulemaking requirements of the APA. Therefore, the requirements for a proposed rule and negotiated rulemaking do not apply to these regulations.

These regulations are final and in effect as published, thirty days after publication in the **Federal Register**. Although the Department is adopting these regulations on an interim final basis, the Department requests public comment on these regulations. After full consideration of public comments, the Secretary will publish final regulations with any necessary changes.

Executive Order 12866

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and therefore subject to the requirements of the Executive Order and subject to review by the OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may (1) have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined this regulatory action will not have an annual effect on the economy of more than $100 million. We believe that approximately 1,000 borrowers are eligible for a discharge on their loan under these provisions and that the costs incurred by the Department, lenders, and GAs to make the necessary systems changes to implement the discharge will approximate $1,350,000. Therefore, this action is not ''economically significant'' and is not subject to OMB review under section 3(f)(1) of Executive Order 12866. However, this action is subject to OMB review under section 3(f)(4) of the Executive Order.

Need for Federal Regulatory Action

These interim final regulations are needed to implement the provisions of the THEEA, which affects borrowers and other program participants in the Federal Perkins, FFEL and Federal Direct Loan Programs authorized under Title IV of the HEA.

The Secretary has limited discretion in implementing these provisions. The changes included in these interim final regulations implement loan discharges

for the outstanding balance of certain Perkins, FFEL, and Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001 terrorist attacks.

Regulatory Flexibility Act Certification

The Secretary certifies that these interim final regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

Sections 674.64, 682.407 and 685.218 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education is required to submit a copy of these sections to the OMB for its review. The burden associated with the above provisions is associated with forms and applications currently under development and will be approved for use under new OMB control numbers. The Department will develop new information collection packages for the following sections: §§ 674.64, 682.407, and 685.218.

The Department will develop the application necessary to implement these provisions under an emergency clearance authorized by OMB. Information required by §§ 674.64(c), 674.64(d), 682.407(d), 682.407(e), 685.218(d), and 685.218(e) to determine eligibility for the discharge will be collected on this OMB-approved application. The information provided on the OMB-approved application will be collected and maintained by the holder of the borrower's loan. In the case of a FFEL loan, if the loan holder approves the discharge request the loan holder will provide the information collected to the guaranty agency that guaranteed the loan.

The Department has submitted a full information collection package for OMB review to account for the burden associated with §§ 674.64, 682.407, and 685.218 concurrently with the publication of these interim final regulations. Accordingly, we invite comments on the burden hours associated with the information collection package for §§ 674.64, 682.402, and 685.218 at this time.

Collection of Information: Federal Perkins Loan Program; Federal Family Education Loan Program; and William D. Ford Federal Direct Loan Program.

Sections 674.64, 682.407 and 685.218—Discharge of a Federal Perkins, FFEL or Federal Direct Loan for Survivors of Eligible Public Servants and Other Eligible Victims of the September 11, 2001 Terrorist Attacks

Under these interim final regulations, the Title IV, HEA loan program regulations are amended to authorize the discharge of the outstanding balance of certain Federal Perkins, FFEL, or Direct Loan Program loans for survivors of eligible public servants and other eligible victims of the September 11, 2001, terrorist attacks. The burden associated with the new requirements will be accounted for under a new OMB Control Number for a FFEL, Direct Loan, and Perkins Loan Discharge Application for September 11, 2001 Survivors. This form has been submitted for OMB review and approval by emergency clearance.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education. You may also send a copy of these comments to the Department representative named in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collection of information contained in these interim final regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives the comments within 30 days of publication.

Assessment of Educational Impact

Based on our own review, we have determined that these interim final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program; 84.038 Federal Perkins Loan Program; 84.268 William D. Ford Federal Direct Loan Program.)

List of Subjects in 34 CFR Parts 674, 682, and 685

Administrative practice and procedure, Colleges and universities, Education, Loans program-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: December 22, 2006.

Margaret Spellings,

Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 674, 682 and 685 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa-1087hh and 20 U.S.C. 421–429, unless otherwise noted.

■ 2. New § 674.64 is added to read as follows:

§ 674.64 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual—

(i) Was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes; or

(ii) Died on board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(3) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 24 hours of the injury having been sustained or within 24 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(4) *Immediate aftermath* means, for an eligible public servant, the period of time from the aircraft crashes until 96 hours after the crashes.

(5) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes; or

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons.

(b) *September 11 survivors discharge.* (1) The obligation of a borrower to make any further payments on an eligible Defense, NDSL, or Perkins Loan is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) A Defense, NDSL, or Perkins Loan owed by the spouse of an eligible public servant may be discharged under the procedures for a discharge in paragraphs (b)(3) through (b)(6) of this section.

(3) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, an institution shall suspend collection activity on the borrower's eligible Defense, NDSL, and Perkins Loans and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(4) If the institution determines that the borrower does not qualify for a discharge under this section, or the institution does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the institution that the borrower claims to qualify for a discharge, the institution shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the institution was notified by the borrower. The institution must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan.

(5) If the institution determines that the borrower qualifies for a discharge under this section, the institution shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan. The institution shall return to the sender any payments received by the institution after the date the loan was discharged.

(6) A Defense, NDSL, or Perkins Loan owed by an eligible public servant may be discharged under the procedures in § 674.61 for a discharge based on the death or total and permanent disability of the eligible public servant.

(c) *Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (c)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a FFEL Program

Loan, a Direct Loan, or a Perkins Loan held by another institution, because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation required in paragraphs (c)(1) through (c)(3) of this section.

(5) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief financial officer of the institution.

(d) *Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.*

(1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a FFEL Loan, a Direct Loan, or a Perkins Loan held by another institution, because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation required in paragraph (d)(1) of this section.

(e) *Additional information.* (1) An institution may require the borrower to submit additional information that the institution deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's employer; or

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant at the site.

(3) To establish that the disability of the eligible public servant is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint FFEL or Federal Direct Consolidation loan applications.

(f) *Limitations on discharge.* (1) Only Defense, NDSL, and Perkins Loans for which amounts were owed on September 11, 2001, are eligible for discharge under this section.

(2) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's Defense, NDSL, or Perkins Loans prior to the date the loan was discharged.

(3) A determination by an institution that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant for a discharge based on a total and permanent disability under § 674.61.

(4) The spouse of an eligible public servant may not receive a discharge under this section if the eligible public servant has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

■ 3. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

■ 4. New § 682.407 is added to read as follows:

§ 682.407 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Eligible victim* means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) *Eligible parent* means the parent of an eligible victim if—

(i) The parent owes a FFEL PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a FFEL Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim.

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual—

(i) Was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001, and the individual died as a direct result of these crashes; or

(ii) Died on board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(5) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate

aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 24 hours of the injury having been sustained or within 24 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) *Immediate aftermath* means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes; or

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons.

(b) *September 11 survivors discharge.* (1) The obligation of a borrower and any endorser to make any further payments on an eligible FFEL Program Loan is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The obligation of a borrower to make any further payments towards the portion of a joint FFEL Consolidation Loan incurred on behalf of an eligible victim is discharged if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The obligation of a borrower and any endorser to make any further payments on a FFEL PLUS Loan incurred on behalf of an eligible victim is discharged.

(ii) The obligation of the borrower to make any further payments towards the portion of a FFEL Consolidation Loan that repaid a FFEL or Direct Loan PLUS Loan incurred on behalf of an eligible victim is discharged.

(c) *Applying for discharge.* (1) A FFEL Program Loan owed by the spouse of an eligible public servant or the spouse or parent of an eligible victim may be discharged under the procedures for a discharge in paragraphs (c)(2) through (c)(12) of this section.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the lender shall suspend collection activity on the borrower's eligible FFEL Program Loan and promptly request that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the lender determines that the borrower does not qualify for a discharge under this section, or the lender does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the lender that the borrower claims to qualify for a discharge, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of both principal and interest from the date the lender was notified by the borrower. The lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.

(4) If the lender determines that the borrower qualifies for a discharge under this section, the lender shall provide the guaranty agency with the following documentation—

(i) The original promissory note or a copy of the promissory note certified by the lender as true and exact;

(ii) The loan application, if a separate loan application was provided to the lender; and

(iii) The completed discharge form, and all accompanying documentation supporting the discharge request that formed the basis for the determination that the borrower qualifies for a discharge.

(5) The lender must file a discharge claim within 60 days of the date on which the lender determines that the borrower qualifies for a discharge.

(6) The guaranty agency must review a discharge claim under this section promptly.

(7) If the guaranty agency determines that the borrower does not qualify for a discharge under this section, the guaranty agency must return the claim to the lender with an explanation of the basis for the agency's denial of the claim. Upon receipt of the returned claim, the lender must notify the borrower that the application for the discharge has been denied, provide the basis for the denial, and inform the borrower that the lender will resume collection on the loan. The lender is deemed to have exercised forbearance of both principal and interest from the date collection activity was suspended until the first payment due date. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during this period.

(8) If the guaranty agency determines that the borrower qualifies for a discharge, the guaranty agency pays the lender on an approved claim the amount of loss required under paragraph (c)(9) of this section. The guaranty agency shall pay the claim within the timeframe established for payment of disability claims in § 682.402(h)(1)(i)(B).

(9) The amount of loss payable on a discharge claim is—

(i) An amount equal to the sum of the remaining principal balance and interest accrued on the loan, unpaid collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were

actually incurred, and unpaid interest up to the date the lender should have filed the claim; or

(ii) In the case of a partial discharge of a Consolidation Loan, the amount specified in paragraph (c)(9)(i) of this section for the portion of the Consolidation Loan incurred on behalf of the eligible victim.

(10) After being notified that the guaranty agency has paid a discharge claim, the lender shall notify the borrower that the loan has been discharged or, in the case of a partial discharge of a Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Consolidation Loan, the lender shall return to the sender any payments received by the lender after the date the guaranty agency paid the discharge claim.

(11) The Secretary reimburses the guaranty agency for a discharge claim paid to the lender under this section after the agency pays the lender. Any failure by the lender to satisfy due diligence requirements prior to the filing of the claim that would have resulted in the loss of reinsurance on the loan in the event of default are waived by the Secretary, provided the loan was held by an eligible loan holder at all times.

(12) Except in the case of a partial discharge of a Consolidation Loan, the guaranty agency shall promptly return to the sender any payment on a discharged loan made by the sender and received after the Secretary pays a discharge claim. At the same time that the agency returns the payment it shall notify the borrower that the loan has been discharged and that there is no further obligation to repay the loan.

(13) A FFEL Program Loan owed by an eligible public servant or an eligible victim may be discharged under the procedures in § 682.402 for a discharge based on the death or total and permanent disability of the eligible public servant or eligible victim.

(d) *Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(ii), (d)(2)(iii), and (d)(3) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Direct Loan or on a FFEL Program Loan held by another FFEL lender because the eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) Under exceptional circumstances and on a case-by-case basis, the determination that an eligible public servant or an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 may be based on other reliable documentation approved by the chief executive officer of the guaranty agency.

(e) *Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a Direct Loan, or a FFEL Program Loan held by another FFEL lender because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a Direct Loan or on a FFEL Program Loan held by another FFEL lender because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) *Additional information.* (1) A lender or guaranty agency may require the borrower to submit additional information that the lender or guaranty agency deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; and

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint Consolidation Loan applications or approved FFEL or Direct Loan PLUS loan applications.

(g) *Limitations on discharge.* (1) Only Federal SLS Loans, Federal Stafford Loans, Federal PLUS Loans, and Federal Consolidation Loans for which amounts were owed on September 11, 2001, or Federal Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's loan prior to the date the loan was discharged.

(3) A determination by a lender or a guaranty agency that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 682.402.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a FFEL PLUS Loan or on a Consolidation Loan that was used to repay a FFEL or Direct Loan PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 5. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et seq.,* unless otherwise noted.

■ 6. Section 685.212 is amended by adding a new paragraph (i) to read as follows:

§ 685.212 Discharge of a loan obligation.

* * * * *

(i) *September 11 survivors discharge.* If a borrower meets the requirements in § 685.218, the Secretary discharges the obligation of the borrower and any endorser to make any further payments—

(1) On an eligible Direct Loan if the borrower qualifies as the spouse of an eligible public servant;

(2) On the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim, if the borrower qualifies as the spouse of an eligible victim;

(3) On a Direct PLUS Loan incurred on behalf of an eligible victim if the borrower qualifies as an eligible parent; and

(4) On the portion of a Direct Consolidation Loan that repaid a PLUS loan incurred on behalf of an eligible victim, if the borrower qualifies as an eligible parent.

■ 7. New § 685.218 is added to read as follows:

§ 685.218 Discharge of student loan indebtedness for survivors of victims of the September 11, 2001, attacks.

(a) *Definition of terms.* As used in this section—

(1) *Eligible public servant* means an individual who—

(i) Served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(ii)(A) Died due to injuries suffered in the terrorist attacks on September 11, 2001; or

(B) Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) *Eligible victim* means an individual who died due to injuries suffered in the terrorist attacks on September 11, 2001 or became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) *Eligible parent* means the parent of an eligible victim if—

(i) The parent owes a Direct PLUS Loan incurred on behalf of an eligible victim; or

(ii) The parent owes a Direct Consolidation Loan that was used to repay a Direct PLUS Loan or a FFEL PLUS Loan incurred on behalf of an eligible victim.

(4) *Died due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual—

(i) Was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual died as a direct result of these crashes; or

(ii) Died on board American Airlines flights 11 or 77 or United Airlines flights 93 or 175 on September 11, 2001.

(5) *Became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001* means the individual was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of or in the immediate aftermath of the terrorist-related aircraft crashes on September 11, 2001 and the individual became permanently and totally disabled as a direct result of these crashes.

(i) An individual is considered permanently and totally disabled if—

(A) The disability is the result of a physical injury to the individual that was treated by a medical professional within 24 hours of the injury having been sustained or within 24 hours of the rescue;

(B) The physical injury that caused the disability is verified by contemporaneous medical records created by or at the direction of the medical professional who provided the medical care; and

(C) The individual is unable to work and earn money due to the disability and the disability is expected to continue indefinitely or result in death.

(ii) If the injuries suffered due to the terrorist-related aircraft crashes did not make the individual permanently and totally disabled at the time of or in the immediate aftermath of the attacks, the individual may be considered to be permanently and totally disabled for purposes of this section if the individual's medical condition has deteriorated to the extent that the individual is permanently and totally disabled.

(6) *Immediate aftermath* means, except in the case of an eligible public servant, the period of time from the aircraft crashes until 12 hours after the crashes. With respect to eligible public servants, the immediate aftermath includes the period of time from the aircraft crashes until 96 hours after the crashes.

(7) *Present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site* means physically present at the time of the terrorist-related aircraft crashes or in the immediate aftermath—

(i) In the buildings or portions of the buildings that were destroyed as a result of the terrorist-related aircraft crashes; or

(ii) In any area contiguous to the crash site that was sufficiently close to the site that there was a demonstrable risk of physical harm resulting from the impact of the aircraft or any subsequent fire, explosions, or building collapses. Generally, this includes the immediate area in which the impact occurred, fire occurred, portions of buildings fell, or debris fell upon and injured persons.

(b) *September 11 survivors discharge.* (1) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on an eligible Direct Loan if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible public servant, unless the eligible public servant has died. If the eligible public servant has died, the borrower must have been the spouse of the eligible public servant at the time of the terrorist attacks on September 11, 2001 and until the date the eligible public servant died.

(2) The Secretary discharges the obligation of a borrower and any endorser to make any further payments towards the portion of a joint Direct Consolidation Loan incurred on behalf of an eligible victim if the borrower was, at the time of the terrorist attacks on September 11, 2001, and currently is, the spouse of an eligible victim, unless the eligible victim has died. If the eligible victim has died, the borrower must have been the spouse of the eligible victim at the time of the terrorist attacks on September 11, 2001 and until the date the eligible victim died.

(3) If the borrower is an eligible parent—

(i) The Secretary discharges the obligation of a borrower and any endorser to make any further payments on a Direct PLUS Loan incurred on behalf of an eligible victim.

(ii) The Secretary discharges the obligation of the borrower and any endorser to make any further payments towards the portion of a Direct Consolidation Loan that repaid a PLUS Loan incurred on behalf of an eligible victim.

(c) *Applying for discharge.* (1) The Secretary discharges a Direct Loan owed by the spouse of an eligible public servant or the spouse or parent of an eligible victim under the procedures for a discharge in paragraphs (c)(2) through (c)(4) of this section.

(2) After being notified by the borrower that the borrower claims to qualify for a discharge under this section, the Secretary suspends collection activity on the borrower's eligible Direct Loans and requests that the borrower submit a request for discharge on a form approved by the Secretary.

(3) If the Secretary determines that the borrower does not qualify for a discharge under this section, or the Secretary does not receive the completed discharge request form from the borrower within 60 days of the borrower notifying the Secretary that the borrower claims to qualify for a discharge, the Secretary resumes collection and grants forbearance of payment of both principal and interest for the period in which collection activity was suspended. The Secretary notifies the borrower that the application for the discharge has been denied, provides the basis for the denial, and informs the borrower that the Secretary will resume collection on the loan. The Secretary may capitalize any interest accrued and not paid during this period.

(4) If the Secretary determines that the borrower qualifies for a discharge under this section, the Secretary notifies the borrower that the loan has been discharged or, in the case of a partial discharge of a Direct Consolidation Loan, partially discharged. Except in the case of a partial discharge of a Direct Consolidation Loan, the Secretary returns to the sender any payments received by the Secretary after the date the loan was discharged.

(5) The Secretary discharges a Direct Loan owed by an eligible victim or an eligible public servant under the procedures in § 685.212 for a discharge based on death or under the procedures in § 685.213 for a discharge based on a total and permanent disability.

(d) *Documentation that an eligible public servant or eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces, or was employed as a police officer, firefighter, or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes; and

(ii) The inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(2) If the individual is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The certification described in paragraph (d)(1)(i) of this section;

(ii) An original or certified copy of the individual's death certificate; and

(iii) A certification from a physician or a medical examiner that the individual died due to injuries suffered in the terrorist attacks on September 11, 2001.

(3) If the individual owed a FFEL Program Loan, a Direct Loan, or a Perkins Loan at the time of the terrorist attacks on September 11, 2001, documentation that the individual's loans were discharged by the lender, the Secretary, or the institution due to death may be substituted for the original or certified copy of a death certificate.

(4) Documentation that an eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001 is the inclusion of the individual on an official list of the individuals who died in the terrorist attacks on September 11, 2001.

(5) If the eligible victim is not included on an official list of the individuals who died in the terrorist attacks on September 11, 2001, the borrower must provide—

(i) The documentation described in paragraphs (d)(2)(ii), (d)(2)(iii), and (d)(3) of this section; and

(ii) A certification signed by the borrower that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(6) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a FFEL Program loan or another Direct Loan because the eligible public servant died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(1) through (d)(3) of this section.

(7) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan or another Direct Loan because the eligible victim died due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraphs (d)(4) and (d)(5) of this section.

(8) The Secretary may discharge the loan based on other reliable documentation that establishes, to the Secretary's satisfaction, that the eligible public servant or the eligible victim died due to injuries suffered in the September 11, 2001 attacks. The Secretary discharges a loan based on documentation other than the documentation specified in paragraphs (d)(1) through (d)(5) of this section only under exceptional circumstances and on a case-by-case basis.

(e) *Documentation that an eligible public servant or eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.* (1) Documentation that an eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) A certification from an authorized official that the individual was a member of the Armed Forces or was employed as a police officer, firefighter or other safety or rescue personnel, and was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes;

(ii) Copies of contemporaneous medical records created by or at the direction of a medical professional who provided medical care to the individual within 24 hours of the injury having been sustained or within 24 hours of the rescue; and

(iii) A certification by a physician, who is a doctor of medicine or osteopathy and legally authorized to practice in a state, that the individual became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001.

(2) Documentation that an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 must include—

(i) The documentation described in paragraphs (e)(1)(ii) and (e)(1)(iii) of this section; and

(ii) A certification that the eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site at the time of the terrorist-related aircraft crashes or in the immediate aftermath of these crashes.

(3) If the borrower is the spouse of an eligible public servant, and has been granted a discharge on a Perkins Loan, a FFEL Program loan, or another Direct Loan because the eligible public servant became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(1) of this section.

(4) If the borrower is the spouse or parent of an eligible victim, and has been granted a discharge on a FFEL Program Loan, or another Direct Loan because the eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001, documentation of the discharge may be used as an alternative to the documentation in paragraph (e)(2) of this section.

(f) *Additional information.* (1) The Secretary may require the borrower to submit additional information that the Secretary deems necessary to determine the borrower's eligibility for a discharge under this section.

(2) To establish that the eligible public servant or eligible victim was present at the World Trade Center in New York City, New York, at the Pentagon in Virginia, or at the Shanksville, Pennsylvania site, such additional information may include but is not limited to—

(i) Records of employment;

(ii) Contemporaneous records of a federal, state, city, or local government agency;

(iii) An affidavit or declaration of the eligible public servant's or eligible victim's employer; or

(iv) A sworn statement (or an unsworn statement complying with 28 U.S.C. 1746) regarding the presence of the eligible public servant or eligible victim at the site.

(3) To establish that the disability of the eligible public servant or eligible victim is due to injuries suffered in the terrorist attacks on September 11, 2001, such additional information may include but is not limited to—

(i) Contemporaneous medical records of hospitals, clinics, physicians, or other licensed medical personnel;

(ii) Registries maintained by federal, state, or local governments; or

(iii) Records of all continuing medical treatment.

(4) To establish the borrower's relationship to the eligible public servant or eligible victim, such additional information may include but is not limited to—

(i) Copies of relevant legal records including court orders, letters of testamentary or similar documentation;

(ii) Copies of wills, trusts, or other testamentary documents; or

(iii) Copies of approved joint FFEL or Direct Loan Consolidation Loan applications or an approved Direct PLUS Loan application.

(g) *Limitations on discharge.* (1) Only Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans and Direct Consolidation Loans for which amounts were owed on

September 11, 2001, or Direct Consolidation Loans incurred to pay off loan amounts that were owed on September 11, 2001, are eligible for discharge under this section.

(2) Eligibility for a discharge under this section does not qualify a borrower for a refund of any payments made on the borrower's Direct Loans prior to the date the loan was discharged.

(3) A determination that an eligible public servant or an eligible victim became permanently and totally disabled due to injuries suffered in the terrorist attacks on September 11, 2001 for purposes of this section does not qualify the eligible public servant or the eligible victim for a discharge based on a total and permanent disability under § 685.213.

(4) The spouse of an eligible public servant or eligible victim may not receive a discharge under this section if the eligible public servant or eligible victim has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001. An eligible parent may not receive a discharge on a Direct PLUS Loan or on a Direct Consolidation Loan that was used to repay a Direct Loan or FFEL Program PLUS Loan incurred on behalf of an individual who has been identified as a participant or conspirator in the terrorist-related aircraft crashes on September 11, 2001.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[EPA–HQ–OAR–2006–0363; FRL–8263–4]

RIN 2060–AN66

Amendment to Tier 2 Vehicle Emission Standards and Gasoline Sulfur Requirements: Partial Exemption for U.S. Pacific Island Territories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to exempt the three U.S. Pacific Island Territories—American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (C.N.M.I.)—from the gasoline sulfur requirements that EPA promulgated in the Tier 2 motor vehicle rule. The Governor of American Samoa petitioned us for an exemption from the Tier 2 gasoline sulfur requirement because of the potential for gasoline shortages, the added cost, and the minimal air quality benefits the Tier 2 gasoline sulfur requirement would provide to American Samoa. Representatives of the Governors of Guam and C.N.M.I. have also requested an exemption referencing the petition submitted by American Samoa. Generally, the Far East market, primarily Singapore, supplies gasoline to the U.S. Pacific Island Territories. The Tier 2 sulfur standard effectively requires special gasoline shipments, which would increase the cost and could jeopardize the security of the gasoline supply to the Pacific Island Territories. The air quality in American Samoa, Guam, and C.N.M.I. is generally pristine, due to the wet climate, strong prevailing winds, and considerable distance from any pollution sources. We recognize that exempting the U.S. Pacific Island Territories from the gasoline sulfur standard will result in smaller emission reductions. However, Tier 2 vehicles using higher sulfur gasoline still emit 30% less hydrocarbons and 60% less NOX than Tier 1 vehicles and negative effects on the catalytic converter due to the higher sulfur levels are, in many cases, reversible. Additionally, these reduced benefits are acceptable due to the pristine air quality, the fact that gasoline quality will not change, and the cost and difficulty of consistently acquiring Tier 2 compliant gasoline. The Tier 2 motor vehicle rule also sets standards for vehicle emissions. Vehicles in use on the U.S. Pacific Island Territories will not be exempt from the Tier 2 vehicle emission standards. However, additional flexibility will be afforded due to the lack of low sulfur gasoline.

DATES: This direct final rule is effective on March 28, 2007 without further notice, unless EPA receives adverse comments by January 29, 2007. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0363, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2006–0363. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0363. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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: Sean Hillson, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mailcode AASMCG, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4789; fax number: (734) 214–4052; e-mail address: *Hillson.Sean@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this direct final rule if adverse comments are filed. This rule will be effective on March 28, 2007 without further notice unless we receive adverse comment by January 29, 2007 or a request for a public hearing by January 12, 2007. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Today's action is also available electronically on the date of publication from EPA's Federal Register Internet Web site listed below. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site: *http://www.epa.gov/fedrgstr/EPA-AIR/* (Either select a desired date or use the Search feature).

The contents of this preamble are listed in the following outline:

I. General Information
II. Background
III. American Samoa
IV. Guam
V. Commonwealth of the Northern Mariana Islands (C.N.M.I.)
VI. What Is EPA Promulgating?
VII. Statutory and Executive Order Reviews
VIII. Statutory Provisions and Legal Authority

I. General Information

A. Does this Action Apply to Me?

This action will affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels for use in the U.S. Pacific Island Territories—American Samoa, Guam, and Commonwealth of the Northern Mariana Islands (C.N.M.I.). It will also affect you if you produce, import, distribute, or sell gasoline fuel for use in the U.S. Pacific Island Territories. The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Examples of potentially regulated entities	NAICS codes [a]	SIC codes [b]
Motor Vehicle Manufacturers	336111	3711
	336112	
	336120	
Alternative Fuel Vehicle Converters	336311	3592
	336312	3714
	422720	5172
	454312	5984
	811198	7549
	541514	8742
	541690	8931
Commercial Importers of Vehicles and Vehicle Components	811112	7533
	811198	7549
	541514	8742
Petroleum Refiners	324110	2911
Gasoline Marketers and Distributers	422710	5171
	422720	5172
Gasoline Carriers	484220	4212
	484230	4213

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC).

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit confidential business information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Is the Tier 2 Rule?

The Tier 2 rule (65 FR 6697, February 10, 2000) instituted a comprehensive regulatory program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles. These reductions provide for cleaner air and greater public health protection, primarily by reducing ozone and PM pollution. The program treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower levels of sulfur in gasoline. The program phases in a single set of tailpipe emission standards that apply to all passenger cars, light trucks, and larger passenger vehicles operated on any fuel. To enable the very clean Tier 2 vehicle emission control technology to be introduced and to maintain its effectiveness, we also require reduced gasoline sulfur levels. The reduction in sulfur levels contributes directly to cleaner air in addition to its beneficial effects on vehicle emission control systems. Refiners have installed additional refining equipment to remove sulfur in their refining processes. Importers of gasoline are required to import and market only gasoline meeting the sulfur standards. These standards currently apply to the U.S. Pacific Island Territories—American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (C.N.M.I.). However, these Territories have received enforcement discretion [1] from the Office of Enforcement and Compliance Assurance which is applicable until November 1, 2007, or once the final rule becomes effective, whichever is earlier.

B. Summary of American Samoa's Petition

Section 325(a)(1) of the Clean Air Act [2] states in relevant part:

> Upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator is authorized to exempt any person or source or class of persons in such territory from any requirement under this chapter other than section 7412 of this title or any requirement under section 7410 of this title or part D of subchapter I of this chapter necessary to attain or maintain a national primary ambient air quality standard. Such exemption may be granted if the Administrator finds that the compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological or economic factors of such territory, or such other local factors as the Administrator deems significant.

Pursuant to Section 325(a)(1) of the Clean Air Act, the Honorable Togiola Tulafono, Governor of American Samoa, petitioned [3] the EPA to exempt all persons in American Samoa from the Tier 2 gasoline sulfur requirements promulgated by the EPA pursuant to Section 211(c)(1) of the Clean Air Act and set forth at 40 CFR Part 80, Subpart H (''Gasoline Sulfur Regulations''). According to the petition, compliance with these requirements in American Samoa is unreasonable due to the unique geographical, meteorological and economic factors of the Territory. The reasons supporting this petition include the following:

- Transportation costs dictate that gasoline be supplied to American Samoa from Far East markets, and the imposition of the rules would cause the American Samoan market to be even less attractive to foreign suppliers in an already limited market and, therefore, compromise the security of the American Samoa gasoline supply;
- Compliance with the Tier 2 gasoline sulfur regulations would result in higher prices for gasoline in an already fragile economy, resulting in added economic hardship to American Samoan residents, the majority of which live below the poverty level; and
- The isolation and small volumes of gasoline used in American Samoa obviate any measurable danger to the environment with respect to an exemption for American Samoa from the Tier 2 rule.

C. Rationale for Guam and C.N.M.I. Tier 2 Exemption

Representatives of the Governors of C.N.M.I. and Guam have also filed requests [4] [5] for exemption from the Tier 2 gasoline sulfur standards. These territories have referenced the American Samoa petition as they have the same fuel suppliers and similar geographical, meteorological and economic factors as American Samoa. Gasoline is transported to the U.S. Pacific Island Territories from Far East markets. Imposing the Tier 2 regulations on the Territories would make the market less attractive to foreign suppliers. This compromises the security of the gasoline supply. One supplier has already pulled out of the market due to difficulty in supplying compliant gasoline.

III. American Samoa

A. American Samoa's Geography and Climate

American Samoa is a group of five volcanic islands and two coral atolls. It is located in Polynesia, approximately 2300 miles southwest of Hawaii and 1600 miles north of New Zealand. American Samoa is an unincorporated Territory of the United States.

American Samoa is comprised of approximately 76 square miles, most of which is mountainous. Over 96 percent of the population lives on the largest island, Tutuila, which is approximately 53 square miles. The small island of Annu'u lies near the east end of the Tutuila. The Manu's Islands (Ta'u, Ofu and Olesega) are located approximately 60 miles east of Tutuila. Swains Island and the uninhabited Rose Atoll are the two remaining islands in the American Samoan group.

American Samoa's closest neighbor is Western Samoa, lying about 60 miles to the west. There are no major population centers in the vicinity of American

[1] EPA, ''Exercise of Enforcement Discretion for Gasoline Sulfur Regulations for the Commonwealth of the Northern Mariana Islands, American Samoa, and the Territory of Guam'', October 30, 2006.

[2] 42 U.S.C. 7625–l(a)(1).

[3] Tulafono, T., Governor of American Samoa, ''Petition for Exemption from the Gasoline Sulfur Regulations'', February 10, 2004.

[4] Rabauliman, F., Director of the C.N.M.I. Division of Environmental Quality, ''Request for Exemption from Gasoline Sulfur Requirements'', August 10, 2006.

[5] Soto, A., Acting Administrator of the Guam Environmental Protection Agency, ''Request for Exemption from Gasoline Sulfur Requirements'', August 14, 2006.

Samoa—the nearest is New Zealand, 1600 miles away.

American Samoa has a tropical maritime climate, with abundant rain, winds, and warm, humid days and nights. Rainfall is about 125 inches a year near the airport but varies greatly over small distances because of the mountainous topography. The mean annual temperature is approximately 80 degrees Fahrenheit and remains fairly constant throughout the year. The prevailing winds throughout the year are the Easterly Trades. The average wind speed is 12.1 miles per hour, and does not vary to a great degree throughout the year. The lowest monthly average wind speeds occur in February, March and April and average about 8.5 miles per hour.

B. What Is the Air Quality Impact for American Samoa?

Due to the wet climate, strong prevailing winds, and the remoteness of American Samoa, the air quality is generally pristine. It is in attainment with EPA's air quality standards, including the National Ambient Air Quality Standards for ozone and SO_2. Exempting American Samoa from the Tier 2 gasoline sulfur standards would not cause an increase in emissions. As noted above, American Samoa has received enforcement discretion for the Tier 2 gasoline sulfur standards from the onset of the program and therefore the gasoline sent to American Samoa has not been required to meet the Tier 2 sulfur levels. Emissions from older vehicles will remain unchanged. Tier 2 vehicles using high sulfur gasoline will be cleaner than Tier 1 vehicles. Tier 2 vehicles using gasoline with 330 ppm sulfur emit 30% less hydrocarbons and 60% less NO_X than Tier 1 vehicles [6]. While this rule will lead to a smaller reduction in emissions than would occur if the Tier 2 sulfur regulations are required, American Samoa's current air quality does not require further reductions. Because of American Samoa's remoteness, there are no cross border issues.

C. Special Market Limitations for American Samoa

American Samoa's gasoline market has unique characteristics due to American Samoa's remoteness. It is not realistic to supply America Samoa from the mainland United States. Consequently, the majority of American Samoa's gasoline is supplied from the Far East market (Singapore and Australia).

The American Samoa petroleum market poses unique challenges, and suppliers periodically withdraw from the market. The amount of fuel purchased by American Samoa is so small that America Samoa is only a minor part of the business of its current suppliers. These suppliers may not be willing to modify their refineries to comply with the EPA's Tier 2 gasoline sulfur requirements simply to supply the small American Samoa market. For instance, Australia currently enforces a gasoline sulfur standard higher than the Tier 2 standard and Singapore does not regulate gasoline sulfur content [7].

In addition, American Samoa is economically challenged. According to the 2000 U.S. Census, 61 percent of American Samoans lived below the poverty level [8]. Its 2000 per capita gross domestic product purchasing power parity was $5,825, compared to the 2005 U.S. per capita GDP purchasing power parity of $41,800 [9]. Revenue transfers from the U.S. government add substantially to its economic well-being. American Samoa's economic activity is primarily fishing and processing and canning of tuna.

IV. Guam

A. Guam's Geography and Climate

Guam is the southern-most island in the Marianas Archipelago. It is located in Polynesia, approximately 3,700 miles west-southwest of Honolulu and 1,550 miles south of Tokyo. The island is about 28 miles long and between 4 and 8.5 miles wide, with a total land area of 209 square miles, about three times the size of Washington, DC. It has a tropical climate with consistently warm and humid weather and westward prevailing trade winds. There is no land mass downwind of Guam within 600 miles.

B. What Is the Air Quality Impact for Guam?

Guam is in attainment with the primary NAAQS, with the exception of sulfur dioxide in two areas. This action is not expected to have any significant impact on the ambient air quality status of Guam, including the status of the two areas designated as nonattainment for sulfur dioxide. Both areas are designated nonattainment for sulfur dioxide as a result of monitored and modeled exceedences in the 1970's prior to implementing changes to power generation facilities.

In the 1990's both plants were rebuilt, upgrading their emission controls. Guam has submitted a redesignation request to EPA. That pending redesignation request shows that they are now in attainment. An emissions inventory shows that the power plants are the major source of SO_2 on Guam. Both plants are on the western side of the island. The Trade Winds blow persistently from east-to-west, further lessening the impact of the SO_2 emissions on the people of Guam from the power plants.

Mobile sources, like cars, are a minor contributor to the SO_2 emission budget. Exempting Guam from the Tier 2 gasoline sulfur and vehicle emission standards would not cause an increase in emissions. Guam has received enforcement discretion for the Tier 2 gasoline sulfur standards from the onset of the program and therefore the gasoline sent to Guam has not been required to meet the Tier 2 sulfur levels. Emissions from older vehicles will remain unchanged. Tier 2 vehicles using high sulfur gasoline will be cleaner than Tier 1 vehicles. Tier 2 vehicles using gasoline with 330 ppm sulfur emit 30% less hydrocarbons and 60% less NO_X than Tier 1 vehicles. While this rule will lead to a smaller reduction in emissions than would occur if the Tier 2 sulfur regulations are required, Guam's current air quality does not require further reductions. Because of Guam's remoteness, there are no cross border issues

C. Special Market Limitations for Guam

The history of the Guam gasoline market has unique characteristics due to its remoteness. It is not realistic to supply Guam from the mainland United States. Consequently, the majority of Guam's gasoline is supplied from Singapore refineries. The shipments to Guam are in relatively small quantities because the island lacks the economy of scale for bigger bulk purchases. These suppliers may not be willing to modify their refineries to comply with the EPA's Tier 2 gasoline sulfur standard simply to supply the small Guam market. As stated earlier, Singapore currently does not regulate gasoline sulfur content.

In addition, Guam is economically challenged. According to the 2000 U.S. Census, Guam's population was 148,060 with 23% living below poverty [10]. Its 2005 per capita GDP purchasing power parity was $15,000, compared to the

[6] EPA, ''EPA Staff Paper on Gasoline Sulfur Issues'', May 1, 1998, EPA420–R–98–005.

[7] International Fuel Quality Center, ''Asia/Australasia: 2005 Regional Fuel Quality Overview and Outlook for 2006'', February 23, 2006.

[8] U.S. Census Bureau, ''American Samoa: 2000 Social, Economic, and Housing Characteristics'', 2001.

[9] Central Intelligence Agency, ''World Fact Book'', June 2006.

[10] U.S. Census Bureau, ''Guam: 2000 Social, Economic, and Housing Characteristics'', 2003.

U.S. per capita GDP purchasing power parity in 2005 of $41,800 [11]. Guam's economy depends significantly on U.S. military spending and on revenue from the tourism industry. Most food and industrial goods are imported, about 75% from the U.S.

V. Commonwealth of the Northern Mariana Islands (C.N.M.I.)

A. C.N.M.I. Geography and Climate

The C.N.M.I. consists of 14 islands of volcanic origin that extend in a general north-south direction for 388 nautical miles. It lies in the Western part of the Pacific Ocean about 1,150 miles south of Tokyo, 108 miles north of Guam, and 5,280 miles from the U.S. mainland. The land area is 176.5 square miles, about 2.5 times the size of Washington, DC. It has a tropical climate with consistently warm and humid weather and westward prevailing trade winds. According to the U.S. Census Bureau, in 2000 the population was 68,775, with population centers primarily on the western side of Saipan, and to a much lesser extent on Tinian and Rota. C.N.M.I. has approximately 200 miles of roads, of which approximately 50 percent are paved.

B. What is the Air Quality Impact for C.N.M.I.?

The concentration of development on the west side of the islands, meteorology (westward trade winds), and lack of heavy industry all have a beneficial impact on C.N.M.I.'s air quality. C.N.M.I. is in attainment with EPA's air quality standards, including the National Ambient Air Quality standard for ozone and SO_2. Exempting C.N.M.I. from the Tier 2 gasoline sulfur and vehicle emission standards would not cause an increase in emissions. C.N.M.I. has received enforcement discretion for the Tier 2 gasoline sulfur standards from the onset of the program and therefore the gasoline sent to C.N.M.I. has not been required to meet the Tier 2 sulfur levels. Emissions from older vehicles will remain unchanged. Tier 2 vehicles using high sulfur gasoline will be cleaner than Tier 1 vehicles. Tier 2 vehicles using gasoline with 330 ppm sulfur emit 30% less hydrocarbons and 60% less NO_X than Tier 1 vehicles. While this rule will lead to a smaller reduction in emissions than would occur if the Tier 2 sulfur regulations are required, C.N.M.I.'s current air quality does not require further reductions. Because of its remoteness, there are no cross border issues.

[11] Central Intelligence Agency, ''World Fact Book'', June 2006.

C. Special Market Limitations for C.N.M.I.

The history of the C.N.M.I. gasoline market has unique characteristics due to its remoteness. It is not realistic to supply C.N.M.I. from the mainland United States. Consequently, the majority of C.N.M.I. gasoline is supplied from the Far East market where gasoline sulfur content may be unregulated or does not meet Tier 2 levels. Gasoline is shipped from Singapore to Guam and then to C.N.M.I. in one ship. Several factors impact the wholesale pricing of gasoline in C.N.M.I., including small volumes, a lack of purchasing power leverage, high transportation costs, and lack of competition. The Tier 2 gasoline sulfur requirements would make the C.N.M.I. market even less attractive to suppliers.

In addition, C.N.M.I. is economically challenged, with 46% of the population living below the poverty level in 2000 [12]. The GDP per capita purchasing power parity in 2000 was $12,500, compared to the United States per capita GDP purchasing power parity in 2005 of $41,800 [13]. The economy benefits substantially from financial assistance from the United States, but this assistance has declined as locally generated government revenues have grown. Chief sources of income are tourism and garment production.

VI. What Is EPA Promulgating?

A. Gasoline Sulfur Requirements

1. Standards

We are exempting American Samoa, Guam, and C.N.M.I. from the Tier 2 gasoline sulfur standard due to the high economic burden of compliance, isolated nature of the territories, both in terms of gasoline importation and pollution transport, and minimal air quality effects. American Samoa, Guam, and C.N.M.I. have each filed a request for exemption from the Tier 2 gasoline sulfur standards. American Samoa has also submitted a petition providing justification for the exemption, which Guam and C.N.M.I. have referenced in their requests as they have the same fuel suppliers and similar geographical, meteorological, and economic factors as American Samoa.

2. Rationale

EPA's Gasoline Sulfur Regulations were published on February 10, 2000. The rules are designed to lower sulfur levels in gasoline in order to reduce emissions from mobile sources of sulfur compounds, ozone, air toxics, and particulate matter. The rules currently apply to the U.S. Pacific Island Territories (65 FR 6713, f.n. 24, February 10, 2000). However, the U.S. Pacific Island Territories have received enforcement discretion of the Tier 2 gasoline sulfur standards until November 1, 2007.

Compliance with the EPA's Tier 2 gasoline sulfur standards would result in undue economic hardship in the U.S. Pacific Island Territories. All three of the territories lack internal petroleum supplies and refining capabilities and rely on long distance imports. Given their remote location from Hawaii and the U.S. mainland, most petroleum products are imported from East Rim nations, particularly Singapore where no gasoline sulfur regulations are in place.

The economies of the Territories are underdeveloped compared with the U.S. mainland, with poverty rates ranging between 23% and 61%. Gasoline must be imported over long distances and in small cargo parcels. This makes the cost of gasoline in the Pacific Island Territories higher than on the mainland United States, exclusive of the effects of taxes. Higher gasoline prices adversely affect the economies of the Territories.

Imposition of the low sulfur gasoline standards would result in a further limitation in potential suppliers to the U.S. Pacific Island Territories. Suppliers will either be dissuaded from supplying the Territories at all, or they would charge prices that would make the importation of the gasoline economically impracticable for its residents. One supplier has pulled out of the market in American Samoa because they were unable to provide compliant gasoline. The fact that a major supplier of gasoline has pulled out of the market speaks to the impracticality of supplying Tier 2 gasoline to the Territories.

B. Vehicle Emission Standards

1. Standards

We are not exempting American Samoa, Guam, and C.N.M.I. from the Tier 2 vehicle emission standards. However, we are providing additional flexibilities for Tier 2 vehicles since low sulfur gasoline is unavailable. These flexibilities are similar to the flexibilities which EPA provided for 1999–2003 model vehicles meeting National Low Emission Vehicle (NLEV) emission standards and 2004–2007 model year vehicles meeting either Interim non-Tier 2 or Tier 2 vehicle

[12] U.S. Census Bureau, ''Commonwealth of the Northern Mariana Islands: 2000 Social, Economic, and Housing Characteristics'', 2003.

[13] Central Intelligence Agency, ''World Fact Book'', June 2006.

emission standards. Under current EPA regulations, these flexibilities are set to expire at the end of the 2007 model year. Today's action extends the flexibilities to 2008 and later model year vehicles introduced into commerce in American Samoa, C.N.M.I., and Guam. The flexibilities (1) allow additional preconditioning prior to conducting exhaust emission tests (to remove sulfur deposits on the catalyst and emission control system components) and (2) allow special OBD system considerations to account for higher levels of sulfur present in gasoline.

2. Sulfur Effects on Tier 2 and NLEV Vehicle Exhaust Emissions and OBD Systems

The effects of sulfur levels in gasoline on vehicle emissions and OBD systems have been well documented in recent years in various Society of Automotive Engineer (SAE) papers and other references. A discussion of sulfur effects on vehicle emissions and OBD systems can be found in the Tier 2 final rule (65 FR 6729, February 10, 2000). In brief, sulfur in gasoline has a negative impact on vehicle emissions, reducing the effectiveness of the catalytic converter. Sulfur compounds attach to some of the precious metal sites in the catalyst, neutralizing some of the catalytic action. Tier 2 and NLEV vehicles are more sensitive to sulfur poisoning than Tier 1 and Tier 0 vehicles. The amount of reduced activity depends on many factors such as the catalyst precious metal formulation, the oxygen storage capacity of the catalyst, the catalyst location, catalyst temperature environment, the air/fuel calibration of the engine, vehicle speed, vehicle load, etc.

Data presented in the Tier 2 final rule (65 FR 6729, February 10, 2000) indicates that for vehicles meeting LEV emission standards, NMHC and NO_X emissions can increase by approximately 150 percent and 50 percent, respectively, on the FTP (city) test if the vehicle was operated on gasoline containing 330 ppm sulfur. While sulfur poisoning is reversible, the amount of reversibility also depends on many factors. Sulfur can be removed from some catalysts by operating the vehicle with a rich exhaust (absence of oxygen) while the catalyst experiences a high temperature environment (above 700 °C).

As discussed in the Tier 2 final rule (65 FR 6729, February 10, 2000), sulfur poisoning has a potential to adversely affect the on-board diagnostic (OBD) system of the vehicle. First, sulfur poisoning can impair the decisions made by the OBD system, and affect the ability of the OBD system to accurately detect catalyst efficiency problems. For example, the OBD system could operate properly on low-sulfur gasoline, but falsely indicate sulfur-induced passes when exposed to high sulfur gasoline. Second, sulfur poisoning has a potential to affect consumer confidence in the OBD system itself. For example, if the OBD system were to detect a substantially higher rate of (sulfur induced) catalyst efficiency problems when operating on high sulfur gasoline, the more frequent illumination of the OBD warning light could lead to a loss of consumer confidence in the OBD system itself. Thus, consumers might become inclined to ignore the OBD warning light and drive potentially high emitting vehicles with emission-related problems unrelated to sulfur in gasoline.

3. Discussion of Vehicle Requirements

Today's action extends the flexibilities of Tier 2 OBD and in-use testing requirements while allowing American Samoa, Guam, and C.N.M.I. to use in-use fuels with sulfur levels above the Tier 2 requirements. We believe that it is appropriate to retain the Tier 2 vehicle emission standards for many reasons, including the following:

a. *Exhaust emission benefits.* EPA Tier 2 emission standards are significantly lower than Tier 1 emission standards. For example, Tier 1 exhaust emission standards for passenger cars are approximately 5–6 times higher than Tier 2 standards. Tier 1 exhaust emission standards for large light-duty trucks and medium duty passenger vehicles are approximately 12 times higher than Tier 2 emission standards. Although Tier 2 vehicles operating in American Samoa, Guam, and C.N.M.I. on high sulfur gasoline would not be expected to achieve the same emissions performance as Tier 2 vehicles operated on low sulfur fuel, the emission reductions realized by Tier 2 vehicles even when operating on high sulfur fuel remain significant relative to a fleet of Tier 1 vehicles operating on such fuels. As noted above, Tier 2 vehicles using gasoline with 330 ppm sulfur emit 30% less hydrocarbons and 60% less NOX than Tier 1 vehicles.

b. *Evaporative emission benefits and other benefits.* EPA Tier 2 evaporative emission standards are approximately 50 percent lower than Tier 1 evaporative emission standards (a reduction which is unaffected by the sulfur level of in-use gasoline). Other beneficial requirements of Tier 2 regulations include extending the passenger car useful life mileage from 100,000 miles to 120,000 miles; eliminating redundant idle CO emission standards for trucks; eliminating adjusted loaded weight (ALVW) test requirements for heavy light-duty trucks; reducing the Supplemental Federal Test Procedure emission standards; and requiring vehicles to have leak-free exhaust systems.

c. *No significant in-use testing problems to date.* EPA conducts ''as received'' in-use surveillance tests on approximately 50 classes of vehicles each year. Three vehicles are normally tested in each class, for a total of approximately 150 vehicles per year. Although EPA tests have been instrumental in several emission-related recalls, we have found that the vast majority of 1999 to 2004 model year vehicles comply with the applicable NLEV/Tier 2 emission standards (even though low sulfur fuel was not available during much of this period). In some cases, the ''as received'' emission test failed to comply with applicable emission standards and the vehicle was retested after performing additional (sulfur removal) preconditioning. For the majority of these retests, emissions changed very little, however in one case, NO_X emissions decreased by approximately 50 percent. There have been no sulfur-related OBD failures to date. Beginning in the 2005 calendar year, automobile manufacturers were also required to perform ''as received'' in-use testing on approximately 1500 vehicles per year. The results of the manufacturer tests generally agree with the results of the EPA tests. The manufacturer tests also showed a high level of compliance with the NLEV and Tier 2 emission standards and no sulfur-related OBD problems. A list of vehicle recalls is available at *http://www.epa.gov/otaq/recall.htm.*

During the time when EPA and manufacturers were conducting their in-use tests on NLEV and Tier 2 vehicles, the nationwide average sulfur levels of gasoline in the United States ranged from approximately 300 ppm in 1999 to 80 ppm in 2004. We note that sulfur levels averaged 300 ppm in 2002 and 130 ppm in 2004 in the Detroit, Michigan area (where test vehicles were recruited for all EPA tests and many manufacturer tests).

While EPA believes that the Tier 2 vehicle standards should continue to apply for vehicles introduced in American Samoa, Guam, and C.N.M.I., we believe that the pre-existing flexibilities provided for vehicles that are exposed to high sulfur gasoline should be extended for vehicles introduced in these Territories. Flexibilities provided in the Tier 2 rule (1) allow additional preconditioning prior to conducting exhaust emission

tests (to remove sulfur deposits on the catalyst and emission control system components) and (2) allow special OBD system considerations to account for sulfur which is present in gasoline. The specific requirements of these flexibilities are found in the current regulations (40 CFR 86.1806–05(d) and 40 CFR 86.1845–04(a)), and are applicable to vehicles up to the 2007 model year. The revised regulations provided with today's action extend these provisions beyond the 2007 model year for vehicles in American Samoa, C.N.M.I., and Guam. The flexibility to allow additional preconditioning prior to emission testing is being extended to accommodate any possible emission testing which may be performed on American Samoa, Guam, or C.N.M.I. vehicles. The OBD flexibilities are being extended (even though current data indicate that they will probably not be needed) because EPA cannot conclude with certainty that they will not be needed for future technology vehicles.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule does not create new requirements. Its purpose is to relieve a burden imposed on the three U.S. Pacific Island Territories.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule would exempt the three U.S. Pacific Island Territories—American Samoa, Guam and the Commonwealth of the Northern Mariana Islands—from the Tier 2 rule for gasoline sulfur requirements and extend related existing flexibilities to the vehicle emission standards for the three territories. It does not create new requirements. Its purpose is to relieve a burden imposed on the three U.S. Pacific Island Territories. We have therefore concluded that today's rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. It does not create new requirements. Its purpose is to relieve a burden imposed on the three U.S. Pacific Island Territories.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the U.S. Pacific Island Territories in developing this rule. A summary of the concerns raised during that consultation and EPA's response to those concerns is provided in previous sections of this preamble.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. This rule would exempt the three U.S. Pacific Island Territories—American Samoa, Guam and the Commonwealth of the Northern Mariana Islands—from the Tier 2 rule for gasoline sulfur requirements and extend related existing flexibilities to the vehicle emission standards for the three territories. It applies only to the three U.S. Pacific Island Territories. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective March 28, 2007.

VIII. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, sections 325, 211 and 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects

40 CFR Part 80

Environmental protection, Adminstrative practice and procedure, Gasoline, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: December 21, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

Subpart H—[Amended]

■ 2. A new § 80.382 is added to Subpart H to read as follows:

§ 80.382 What requirements apply to gasoline for use in American Samoa, Guam and the Commonwealth of the Northern Mariana Islands?

The gasoline sulfur standards of §§ 80.195 and 80.240(a) do not apply to gasoline that is produced, imported, sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in the Territories of Guam, American Samoa or the Commonwealth of the Northern Mariana Islands, provided that such gasoline is:

(a) Designated by the refiner or importer as high sulfur gasoline only for use in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(b) Used only in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(c) Accompanied by documentation that complies with the product transfer document requirements of § 80.365; and

(d) Segregated from non-exempt high sulfur fuel at all points in the distribution system from the point the fuel is designated as exempt fuel only for use in Guam, American Samoa, or the Commonwealth of the Northern

Mariana Islands, while the exempt fuel is in the United States but outside these Territories.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 3. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—[Amended]

■ 4. Section 86.1806–05 is amended by revising paragraph (d)(2) to read as follows:

§ 86.1806–05 On-board diagnostics.

* * * * *

(d) * * *

(2)(i) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs produced through the 2007 model year, upon a manufacturer's written request, EPA will consider allowing the use of an on-board diagnostic system during the certification process that functions properly on low-sulfur gasoline but indicates sulfur-induced passes when exposed to high sulfur gasoline. After the 2007 model year, this provision can be used only for interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs introduced into commerce in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, but this provision only can be used for such vehicles in any of those locations if low sulfur gasoline is determined by the Administrator to be unavailable in that specific location.

(ii) For interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs, if vehicles produced through the 2007 model year exhibit illuminations of the emission control diagnostic system malfunction indicator light due to high sulfur gasoline, EPA will consider, upon a manufacturer's written request, allowing modifications to such vehicles on a case-by-case basis so as to eliminate the sulfur induced illumination. After the 2007 model year, this provision can be used only for interim non-Tier 2 and Tier 2 LDV/LLDTs and HLDT/MDPVs introduced into commerce in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, but this provision only can be used for such vehicles in any of those locations if low sulfur gasoline is determined by the Administrator to be unavailable in that specific location.

* * * * *

■ 5. Section 86.1845–04 is amended by revising paragraph (a)(3) to read as follows:

§ 86.1845–04 Manufacturer in-use verification testing requirements.

(a) * * *

(3) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA. Such procedures are not available for complete HDVs. After the 2007 model year, this provision can be used only for in-use vehicles in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, but this provision only can be used for such vehicles in any of those locations if low sulfur gasoline is determined by the Administrator to be unavailable in that specific location.

* * * * *

■ 6. Section 86.1846–01 is amended by revising paragraph (a)(4) to read as follows:

§ 86.1846–01 Manufacturer in-use confirmatory testing requirements.

(a) * * *

(4) Upon a manufacturer's written request, prior to in-use testing, that presents information to EPA regarding pre-conditioning procedures designed solely to remove the effects of high sulfur in gasoline from vehicles produced through the 2007 model year, EPA will consider allowing such procedures on a case-by-case basis. EPA's decision will apply to manufacturer in-use testing conducted under this section and to any in-use testing conducted by EPA. This provision does not apply to heavy-duty vehicles and engines. After the 2007 model year, this provision can be used only for in-use vehicles in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, but this provision only can be used for such vehicles in any of those locations if low sulfur gasoline is determined by the Administrator to be unavailable in that specific location.

* * * * *

[FR Doc. E6–22310 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–8262–9]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Deletion of the Brio Refining, Inc. Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the Brio Refining, Inc. Superfund Site (Site), located in Friendswood, Texas, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This action is being taken by EPA with the concurrence of the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed. Moreover, EPA and TCEQ have determined that with proper monitoring, operation and maintenance, this Site poses no significant threat to public health or the environment.

DATES: *Effective Date:* December 28, 2006.

FOR FURTHER INFORMATION CONTACT: John C. Meyer, Remedial Project Manager, U.S. EPA Region 6 (6SF–LP), 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6742 or 1–800–533–3508 (*meyer.john@epa.gov*).

Information Repositories: Comprehensive information about the Site is available for viewing and copying during central standard time at the Site information repositories located at: U.S. EPA Region 6 Library, 7th Floor, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733, (214) 665–6424, Monday through Friday 9 a.m. to 12 p.m. and 1 p.m. to 4 p.m.; San Jacinto College, South Campus Library, 13735 Beamer Road, Houston, Texas, 77089, (281) 992–3416, Monday through Thursday 8 a.m. to 9 p.m.; Friday 8 a.m. to 3 p.m.; Saturday 10 a.m. to 1 p.m.; Texas Commission on Environmental Quality, Central File Room Customer Service Center, Building E, 12100 Park 35 Circle, Austin, Texas, 78753, (512) 239–

2900, Monday through Friday 8 a.m. to 5 p.m.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Brio Refining, Inc. Superfund Site, Friendswood, Texas. A direct final deletion and a notice of intent to delete were published in the **Federal Register** on June 23, 2006 (71 FR 36015 and 36048). In these notices, EPA requested public comment on the proposed NPL deletion of the Site until July 24, 2006. During the 30-day comment period, EPA received correspondence offering critical comments. As a result of the critical comments, EPA published a Notice of Withdrawal of Direct Final Deletion of the Site on August 22, 2006. EPA evaluated the comments received and prepared a Responsiveness Summary and has concluded after a review of the comments that the Site does not pose a significant threat to public health or the environment. Copies of the Responsiveness Summary are available at the information repositories.

EPA identifies sites that appear to present a significant risk to public health or the environment and it maintains the NPL as the active list of these sites. As described in 40 CFR 300.425(e)(3), any site deleted from the NPL remains eligible for remedial action in the unlikely event that conditions at a site warrant such action. Deletion of a site from the NPL does not affect the liability of potentially responsible parties nor does it impede EPA efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water Pollution control, Water supply.

Dated: December 20, 2006.

Richard E. Greene,

Regional Administrator, Region 6.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under Texas (''TX'') by removing the entry for ''Brio Refining, Inc.''.

[FR Doc. E6–22298 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 71, No. 249
Thursday, December 28, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26378; Directorate Identifier 2006–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B16 (CL–604) Airplanes and Model CL–600–2B19 (Regional Jet Series 100 & 440) 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 NPRM for an airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B16 (CL–604) airplanes and Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. These models may be referred to by their marketing designations as RJ100, RJ200, RJ440, CRJ100, CRJ200, CRJ440, and CL–65. The original NPRM would have superseded an existing AD that currently requires revising the Emergency Procedures section of the airplane flight manual (AFM) to advise the flightcrew of additional procedures to follow in the event of stabilizer trim runaway. The existing AD also requires revising the Abnormal Procedures section of the AFM to advise the flightcrew of procedures to follow in the event of MACH TRIM, STAB TRIM, and horizontal stabilizer trim malfunctions. The existing AD also requires revising the Normal section of the AFM to require a review of the location of certain circuit breakers and a functional check of the stabilizer trim system. In addition, the existing AD requires installing circuit breaker identification collars and provides an optional terminating action for the requirements of the AD. The original NPRM proposed to require doing the previously optional terminating action (installation of a new horizontal stabilizer trim control unit). The original NPRM resulted from a determination that the terminating action is necessary to address reports of uncommanded horizontal stabilizer trim motion. This new action revises the original NPRM by not allowing the removal of applicable temporary revisions (TRs) to the Emergency and Abnormal Procedures sections of the AFM and by adding the proposed requirement for certain airplanes to re-insert the applicable TRs of the Emergency and Abnormal Procedures sections of the AFM under certain conditions. We are proposing this supplemental NPRM to prevent horizontal stabilizer trim uncommanded motion, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this supplemental NPRM by January 17, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* 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 Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposal. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–26378; Directorate Identifier 2006–NM–230–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 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 **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) (the ''original NPRM'') to amend 14 CFR part 39 to include an AD that supersedes AD 2006–22–06, amendment 39–14803 (71 FR 63219, October 30, 2006). The existing AD applies to certain Bombardier Model CL–600–2B16 (CL–604) airplanes and Model CL–600–2B19 (Regional Jet Series 100 & 440)

airplanes. The original NPRM was published in the **Federal Register** on November 22, 2006 (71 FR 67502). The original NPRM proposed to supersede AD 2006–22–06 and proposed to require terminating action (installation of a new horizontal stabilizer trim control unit (HSTCU)).

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we determined that paragraph (m) of AD 2006–22–06 inadvertently allows the removal of the airplane flight manual (AFM) revisions specified in paragraph (h) of AD 2006–22–06. We also determined that paragraph (l) of the original NPRM inadvertently allowed the same removal of the AFM revisions. The AFM revisions specified in paragraph (f) of the original NPRM (which correspond to the AFM revisions specified in paragraph (h) of the AD 2006–22–06) should not be allowed to be removed after the installation specified in paragraph (l) of the original NPRM unless the revision is incorporated into the general revisions of the corresponding AFM.

Therefore, we have revised paragraph (l) of this supplemental NPRM by removing the phrase ''the AFM revisions required by paragraph (f) of this AD may be removed from the applicable AFM.''

We have also added paragraph (n) of this supplemental NPRM to propose to reinsert the AFM revisions specified in paragraph (f) of this supplemental NPRM for airplanes for which the AFM revisions have been removed in accordance with the requirements of paragraph (m) of the AD 2006–22–06.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The 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.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
AFM Revisions and Installation of Circuit Breaker Collars (required by AD 2006–22–06).	2	$3	$163	875	$142,625
Installation of HSTCU (new proposed action).	11	Between $2,530 and $3,995.	Between $3,410 and $4,875.	875	Between $2,983,750 and $4,265,625

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 removing amendment 39–14803 (71 FR 63219, October 30, 2006) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2006–26378; Directorate Identifier 2006–NM–230–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 17, 2007.

Affected ADs

(b) This AD supersedes AD 2006–22–06.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B16 (CL–604) airplanes, serial numbers 5301 through 5665 inclusive; and Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7990 inclusive and 8000 through 8066 inclusive; certificated in any category.

Note 1: The Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes may be

referred to by their marketing designations as RJ100, RJ200, RJ440, CRJ100, CRJ200, CRJ440, and CL–65.

Unsafe Condition

(d) This AD results from reports of uncommanded horizontal stabilizer trim motion. We are issuing this AD to prevent horizontal stabilizer trim uncommanded motion, 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 Certain Requirements of AD 2006–22–06

Airplane Flight Manual (AFM) Revisions

(f) Within 14 days after November 14, 2006 (the effective date of AD 2006–22–06), make the applicable AFM revisions specified in paragraph (f)(1) or (f)(2) of this AD by incorporating the applicable Canadair (Bombardier) temporary revisions (TRs) identified in Table 1 of this AD into the applicable AFM.

(1) For Model CL–600–2B16 (CL–604) airplanes: Revise the Emergency and Abnormal Procedures sections of the AFM to advise the flightcrew of additional procedures to follow in the event of stabilizer trim runaway and to advise the flightcrew of revised procedures to follow in the event of MACH TRIM, STAB TRIM, and horizontal stabilizer trim malfunctions.

(2) For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes: Revise the Emergency and Abnormal Procedures sections of the AFM to advise the flightcrew of revised procedures to follow in the event of stabilizer trim runaway and in the event of MACH TRIM, STAB TRIM, and horizontal stabilizer trim malfunctions.

TABLE 1.—TRS

For Bombardier Model	Use	Dated	To the
CL–600–2B16 (CL–604) airplanes	Canadair Challenger TR 604/21–1	October 3, 2006.	Canadair Challenger CL–604 AFM, PSP 604–1.
CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.	Canadair Regional Jet TR RJ/152–5	October 3, 2006.	Canadair Regional Jet AFM, CSP A–012.

(g) When the applicable TR specified in paragraph (f) of this AD has been included in the general revisions of the applicable AFM, those general revisions may be inserted into the AFM and the applicable TR may be removed, provided the relevant information in the general revisions is identical to that in the TR.

Installation of Circuit Breaker Identification Collars

(h) Within 14 days after November 14, 2006, install circuit breaker identification collars in accordance with Bombardier Modification Summary Package IS601R27410051, Revision C, dated September 29, 2006 (for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes); or the Accomplishment Instructions of Bombardier Alert Service Bulletin A604–27–029, dated September 28, 2006 (for Model CL–600–2B16 (CL–604) airplanes); as applicable.

Additional AFM Revision

(i) For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes: Within 14 days after November 14, 2006, revise the Normal section of the Canadair Regional Jet AFM, CSP A–012, to include the statement specified in Figure 1 of this AD. This may be done by inserting a copy of Figure 1 of this AD into the AFM.

''Prior to the flightcrew's first flight of the day, do the following actions:

1. Review the location of the STAB CH1 HSTCU and STAB CH2 HSTCU circuit breakers.
2. Complete a functional check of the stabilizer trim system as detailed below.

Control Wheel Stab Trim Disconnect Check

Control Wheel Stab Trim Disconnect switches—Check

- Make sure STAB TRIM caution message is out.
- Activate the pilot's Control Wheel Stab Trim Disconnect switch and make sure the STAB TRIM caution message comes on.

Note: During ground testing only, do not activate the Control Wheel Stab Trim Disconnect switch if the horizontal stabilizer trim is in motion.

- Engage the STAB TRIM switches and make sure the STAB TRIM caution message is out.
- Activate the co-pilot's Control Wheel Stab Trim Disconnect switch and make sure the STAB TRIM caution message comes on.
- Engage the STAB TRIM and MACH TRIM switches and make sure the STAB TRIM and MACH TRIM caution messages are out.''

Figure 1

Note 2: When a statement identical to that in paragraph (i) of this AD has been included in the general revisions of the applicable AFM, those general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(j) For Model CL–600–2B16 (CL–604) airplanes: Within 14 days after November 14, 2006, revise the Normal section of the Canadair Challenger CL–604 AFM, PSP 604–1, to include the following statement. This may be done by inserting a copy of this AD into the AFM.

''Prior to the flightcrew's first flight of the day, do the following actions:

1. Review the location of the STAB CH1 HSTCU and STAB CH2 HSTCU circuit breakers.
2. Check the stabilizer trim system as detailed in CL–604 AFM 'Normal Procedures' section titled 'Flight Controls Trim Systems, Before Flight—First Flight of the Day.' ''

Note 3: When a statement identical to that in paragraph (j) of this AD has been included in the general revisions of the applicable AFM, those general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Previous Actions Accomplished According to Modification Summary Package

(k) Actions accomplished before November 14, 2006, in accordance with Bombardier Modification Summary Package IS601R27410051, Revision A, dated September 18, 2006; or Revision B, dated September 27, 2006; are considered acceptable for compliance with the action specified in paragraph (h) of this AD, provided that the circuit breaker collars meet the color requirements of Bombardier Modification Summary Package IS601R27410051, Revision C, dated September 29, 2006.

New Requirements of This AD

Terminating Action—Installation of New, Improved Part

(l) Within 9 months after the effective date of this AD, install horizontal stabilizer trim control unit (HSTCU), part number (P/N) 601R92301–15 (vendor P/N 7060–10) or higher dash number, in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A604–27–029, dated September 28, 2006 (for Model CL–600–2B16 (CL–604) airplanes); or Bombardier Service Bulletin 601R–27–147, dated September 28, 2006 (for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes); as applicable. After doing the installation, the circuit breaker identification collars required by paragraph (h) of this AD may be removed. After doing the installation, the AFM revision required by paragraphs (i) and (j) of this AD may also be removed from the AFM but operators should note that the functional check of the stabilizer trim system on the airplane's first flight of the day must still be done.

Note 4: Bombardier Service Bulletin 601R–27–147, dated September 28, 2006, refers to Sagem Service Bulletin HSTCU–27–011, dated September 22, 2006, as an additional source of service information for accomplishment of the installation.

Service Bulletin Exception

(m) Although Bombardier Alert Service Bulletin A604–27–029, dated September 28, 2006, specifies to return certain parts to the manufacturer, this AD does not include that requirement.

Reinsert AFM Revisions

(n) For airplanes on which the AFM revisions required by paragraph (f) of this AD were removed from the applicable AFM before the effective date of this AD: Within 14 days after the effective date of this AD, reinsert the applicable AFM revisions specified in paragraph (f) of this AD. When the applicable TR specified in paragraph (f) of this AD has been included in the general revisions of the applicable AFM, the applicable TR may be removed.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(p) Canadian airworthiness directives CF–2006–20R1, dated October 4, 2006, and CF–2006–21R1, dated October 3, 2006, also address the subject of this AD.

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

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22271 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26709; Directorate Identifier 2006–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 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 Fokker Model F.28 Mark 0070 and 0100 airplanes. This proposed AD would require inspecting the carbon-fiber reinforced plastic (CFRP) main landing gear (MLG) door to determine whether certain part numbers are installed. For airplanes having certain doors, this proposed AD would require inspecting the MLG outboard door for cracks, play, and loose sealant/bolts/nuts, and related investigative and corrective actions if necessary. This proposed AD would also require, for airplanes having certain doors, modifying the rod bracket attachment of the MLG outboard door. This proposed AD results from a report of a rod bracket of the MLG door detaching during flight. We are proposing this AD to detect and correct cracks in the rod bracket attachment bolts, which could result in the rod brackets detaching from the MLG door and blocking the proper functioning of the MLG.

DATES: We must receive comments on this proposed AD by January 29, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* 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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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–2006–26709; Directorate Identifier 2006–NM–202–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 Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on Fokker Model F.28 Mark 0070 and 0100 airplanes equipped with certain carbon-fiber reinforced plastic (CFRP) main landing gear (MLG) doors. The CAA–NL reports that a rod bracket of the MLG door of a Model F.28 Mark 0070 airplane detached during flight. Investigation showed that the operating rod between the MLG outboard door and the MLG fitting was broken and the rod's bracket was detached from the outboard door. The affected parts subsequently got stuck between the MLG and the outboard door hinge, resulting in damage to the two adjacent hydraulic lines. An investigation of a similar event revealed an operating rod bracket broken loose from the CFRP MLG door. Several other operators have also reported finding partly detached operating rod brackets. This condition, if not corrected, could result in rod

brackets detaching from the CFRP MLG outboard door and blocking the proper functioning of the MLG.

Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005.

In Part 1 of the Accomplishment Instructions of the service bulletin, the service bulletin describes procedures for doing a detailed inspection of the MLG outboard door for cracks, play, and loose sealant/bolts/nuts. The detailed inspection consists of the following actions:

- Inspecting for any cracks in the CFRP skin of the MLG outboard door.
- Inspecting for play between the countersunk bolt-heads and the CFRP outer skin.
- Inspecting for cracks in the paint.
- Inspecting for play between the operating rod bracket and the MLG outboard door.
- Inspecting for loose sealant around the edges of the bracket and loose bolts and nuts.

Part 1 of the service bulletin also describes doing the following related investigative action if play is found or if there are any loose bolts/nuts: Inspecting the inside of the door for cracks in the CFRP outer skin at the bolt hole locations and/or checking for delamination by tapping.

Part 1 of the service bulletin also describes doing one of the following corrective actions if play is found, if there are any loose bolts/nuts, or if any crack is found: Contacting Fokker, operating under Configuration Deviation List (CDL) item 52–07 (''operating with MLG strut bay doors missing'') of the Fokker Appendix CDL, to Fokker 70/Fokker 100 Airplane Flight Manual (AFM), Version 06, Issue 010, or doing the modification of the MLG outboard door operating rod bracket attachment specified in Part 2 of the service bulletin.

Part 2 of the Accomplishment Instructions of the service bulletin describes procedures for modifying the MLG outboard door operating rod bracket attachment. The modification includes installing internal and external reinforcement plates, reidentifying the outboard MLG door, and doing the following related investigative actions and corrective actions:

- Inspecting for damage of the operating rod bracket and operating rod.
- If any damage is found, doing one of the following: contacting Fokker, operating under CDL item 52–07, or replacing damaged part with a new part.
- Inspecting for cracks and and/or checking for delamination by tapping of the skin around the attachment holes.
- If any crack or delamination is found, doing one of the following: Repairing the cracks or delamination, or contacting Fokker if any crack or delamination is found beyond 10 millimeters (mm) (0.040 inches) from the bolt holes.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA–NL mandated the service information and issued Dutch airworthiness directive NL–2006–001, dated January 5, 2006, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the Netherlands 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 CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes 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, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the European Aviation Safety Agency (EASA) (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the EASA approve would be acceptable for compliance with this proposed AD.

Clarification of Service Bulletin

Paragraph B.(3) of Part 1 of the Accomplishment Instructions of the service bulletin specifies to inspect for loose sealant and paragraph B.(6) specifies to inspect for delamination. However corrective actions for those conditions are not specified in the service bulletin. This proposed AD would require doing the corrective action specified in paragraph C.(3) of the service bulletin if any loose sealant or delamination is found during any inspection specified in paragraph (g) of the proposed AD.

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	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections	2	$80	$0	$160	7	$1,120
Modification	6	80	1,066	1,546	7	10,822

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):

Fokker Services B.V: Docket No. FAA–2006–26709; Directorate Identifier 2006–NM–202–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of a rod bracket of the main landing gear (MLG) door detaching during flight. We are issuing this AD to detect and correct cracks in the rod bracket attachment bolts, which could result in the rod brackets detaching from the MLG door and blocking the proper functioning of the MLG.

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.

Inspections

(f) Within nine months after the effective date of this AD, inspect the carbon-fiber reinforced plastic (CFRP) MLG doors to determine if any MLG door having a part number (P/N) D13312–401 through –410 inclusive is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the CFRP MLG doors can be conclusively determined from that review. If the CFRP MLG doors have any part number other than P/N D13312–401 through –410 inclusive installed, no further action is required by this AD.

(g) If any CFRP MLG door having any P/N D13312–401 through–410 inclusive is found during the inspection required by paragraph (f) of this AD: Within nine months after the effective date of this AD, do a detailed inspection of the MLG outboard door for cracks, play, and loose sealant/bolts/nuts as specified in Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005, and do all applicable related investigative and corrective actions, by doing all the applicable actions specified in Part 1 of the Accomplishment Instructions of the service bulletin, except as provided by paragraphs (i), (j), and (k) of this AD. Do all applicable related investigative and corrective actions before further flight.

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.''

Modification

(h) If any CFRP MLG door having any P/N D13312–401 through–410 inclusive is found during the inspection required by paragraph (f) of this AD: Within 12 months after the effective date of this AD, modify the MLG outboard door operating rod bracket attachment and do all applicable related investigative and corrective actions by doing all the applicable actions specified in Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005, except as provided by paragraph (i) of this AD. Do all applicable related investigative and corrective actions before further flight.

Exceptions to the Service Bulletin

(i) Where Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005, specifies to contact the manufacturer for repair, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(j) If any loose sealant or any delamination is found during any inspection required by paragraph (g) of this AD, before further flight, do the corrective action specified in paragraph C.(3) of Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–52–080, dated December 12, 2005, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F100–103, dated November 15, 2005.

(k) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(l)(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

(m) Dutch airworthiness directive NL–2006–001, dated January 5, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on December 19, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22282 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26707; Directorate Identifier 2006–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Airplanes and A340–200 and –300 Series 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 certain Airbus Model A330 airplanes and A340–200 and –300 series airplanes. For certain airplanes, this proposed AD would require inspecting to determine the part number of certain S4- and MZ-type spoiler servo-controls (SSCs). For certain other airplanes, this proposed AD would require inspecting to determine the part number of all SSCs. This proposed AD would also require replacing any affected SSC with a new SSC. This proposed AD results from a new load duty cycle defined by the manufacturer. Additional fatigue tests and calculations done on this basis indicated that the spoiler valve manifold of the S4-type SSCs, and, on certain airplanes, the maintenance cover of the MZ-type SSCs, may crack during its service life due to pressure impulse fatigue. We are proposing this AD to prevent fatigue cracking of certain SSCs, which could result in hydraulic leakage and consequent loss of SSC function and loss of the associated hydraulic system. These conditions could affect all three hydraulic systems, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by January 29, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking web site: Go to *http://www.regulations.gov* 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: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; 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–2006–26707; Directorate Identifier 2006–NM–157–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 certain Airbus Model A330 airplanes and A340–200 and –300 series airplanes. The EASA advises that a new load duty cycle has been defined by the manufacturer. Additional fatigue tests and calculations done on this basis indicated that the spoiler valve manifold of the S4-type spoiler servo-controls (SSCs) may crack during its service life due to pressure impulse fatigue. The maintenance cover of the MZ-type SSCs on Model A330–200 airplanes may also crack during its service life due to pressure impulse fatigue. This fatigue cracking, if not corrected, could result in hydraulic leakage and consequent loss of SSC function and loss of the associated hydraulic system. These conditions could affect all three hydraulic systems, which could result in reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A330–27–3113, Revision 04, dated June 13, 2006 (for Model A330 airplanes). The service bulletin describes procedures for inspecting to determine the part number and serial number of all S4- and MZ-type SSCs. For airplanes on which any S4-or MZ-type SSC is installed, the service bulletin describes procedures for replacing any affected SSC installed in positions 2 through 6 inclusive with a 138X-type SSC, and any affected SSC installed in position 1 with a 138X-type SSC.

Airbus has also issued Service Bulletin A340–27–4139, Revision 01, dated June 12, 2006 (for Model A340–200 and –00 series airplanes). The service bulletin describes procedures for inspecting to determine the part number and serial number of all SSCs. For airplanes on which any MZ-or 138X-type SSC is installed, no further action is necessary. For airplanes on which any S4-type SSC is installed, the service bulletin describes procedures for replacing any affected SSC installed in positions 2 through 6 inclusive with a 138X-type SSC, and any affected SSC installed in position 1 with a 138X-type SSC.

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 directives 2006–0158 and 2006–0159, both dated June 7, 2006, to

ensure the continued airworthiness of these airplanes in France.

The Airbus service information refers to LIEBHERR Service Information Letter SIL 142, Revision 2, dated September 28, 2005; and SIL 190, dated September 27, 2005, as additional sources of service information for accomplishing the specified actions.

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 airplanes 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, except as discussed under ''Differences Among Proposed AD, EASA Airworthiness Directives, and Airbus Service Information.''

Differences Among Proposed AD, EASA Airworthiness Directives, and Airbus Service Information

EASA airworthiness directive 2006–0159 (which supersedes French airworthiness directive F–2003–357) requires identifying the part number of all S4- or MZ-type SSCs installed on airplanes identified in Airbus Service Bulletin A330–27–3113, Revision 04, no later than January 31, 2004. At the time French airworthiness directive F–2003–357(B) was issued October 1, 2003, there were no Model A330–200 airplanes registered in the U.S., and those delivered since that time were not equipped with the S4- or MZ-type SSCs on delivery.

EASA airworthiness directive 2006–0158 requires identifying the part number of all SSCs installed on airplanes identified in Airbus Service Bulletin A340–27–4139, Revision 01, no later than August 31, 2006.

This proposed AD would require identifying the part number for all affected airplanes within 70 days after the effective date of this AD for all affected airplanes. We find that a 70-day compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with the EASA.

The EASA airworthiness directives do not specify a compliance time for SSCs that have exceeded the total number of flight cycles recommended since new. This proposed AD would require those SSCs be replaced before further flight.

The Accomplishment Instructions of the Airbus service bulletins specify to provide LIEBHERR–AEROSPACE with the part number and serial number of the cylinder housing of the SSC if the identification plate is missing; however, this proposed AD does not require that action, but would require obtaining the part number and serial number using a method that we or the EASA (or its delegated agent) approve.

Costs of Compliance

This proposed AD would affect about 27 airplanes of U.S. registry.

It would take about 1 work hour per airplane to accomplish the inspection to determine the part number, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the inspection proposed by this AD for U.S. operators is $2,160, or $80 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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–2006–26707; Directorate Identifier 2006–NM–157–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; excluding airplanes on which AIRBUS Modification 44670 has been embodied in production.

Unsafe Condition

(d) This AD results from a new load duty cycle defined by the manufacturer. Additional fatigue tests and calculations done on this basis indicated that the spoiler valve manifold of the S4-type spoiler servo-controls (SSCs), and, on certain airplanes, the maintenance cover of the MZ–SSCs, may

crack during its service life due to pressure impulse fatigue. We are issuing this AD to prevent fatigue cracking of certain SSCs, which could result in hydraulic leakage and consequent loss of SSC function and loss of the associated hydraulic system. These conditions could affect all three hydraulic systems, 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.

Determine the Part Number of the SSCs/Replace if Necessary

(f) For Model A330–200 airplanes: Within 70 days after the effective date of this AD, inspect to determine the part number of all SSCs in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3113, Revision 04, dated June 13, 2006.

(1) If the part number is not identified in Table 1 of paragraph 3.B.(1)(a) or 3.B.(2)(a) of the Accomplishment Instructions of the service bulletin: No further action is required by this paragraph.

(2) If the part number is identified in Table 1 of paragraph 3.B.(1)(a) or 3.B.(2)(a) of the Accomplishment Instructions of the service bulletin: Do the applicable actions specified in paragraphs (f)(2)(i), (f)(2)(ii), and (f)(2)(iii) of this AD in accordance with the Accomplishment Instructions of the service bulletin.

(i) If any SSC is installed in positions 2 through 6: Before the accumulation of 6,000 total flight cycles on the SSC since new, replace the SSC with a 138X-type SSC.

(ii) If any SSC is installed in position 1: Before the accumulation of 11,000 total flight cycles on the SSC since new, replace the SSC with a 138X-type SSC.

(iii) If the total flight cycles on any SSC exceeds the total flight cycles specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable, or on which the total flight cycles are unknown: Before further flight, replace the SSC with a 138X-type SSC.

(3) If any SSC has a missing identification plate, before further flight, identify the part number of the cylinder housing of the SSC by using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA)(or its delegated agent). Before further flight after determining the part number, accomplish the requirements in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(g) For Model A330–300 airplanes and Model A340–200 and –300 series airplanes: Within 70 days after the effective date of this AD, inspect to determine the part number of all SSCs in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3113, Revision 04, dated June 13, 2006; or A340–27–4139, Revision 01, dated June 12, 2006; as applicable.

(1) If the part number is not identified in Table 1 of paragraph 3.B.(1)(a) or 3.B.(2)(a) of the Accomplishment Instructions of the applicable service bulletin: No further action is required by this paragraph.

(2) If the part number is identified in Table 1 of paragraph 3.B.(1)(a) or 3.B.(2)(a) of the Accomplishment Instructions of the applicable service bulletin: Do the applicable actions specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD in accordance with the Accomplishment Instructions of the applicable service bulletin.

(i) If any SSC is installed in positions 2 through 6: Before the accumulation of 14,000 total flight cycles on the SSC since new, replace the SSC with a 138X-type SSC.

(ii) If any SSC is installed in position 1: Before the accumulation of 15,000 total flight cycles on the SSC since new, replace the SSC with a 138X-type SSC.

(iii) If the total flight cycles on any SSC exceeds the total flight cycles specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, as applicable, or if the total flight cycles are unknown: Before further flight, replace the SSC with a 138X-type SSC.

(3) If any SSC has a missing identification plate, before further flight, identify the part number of the SSC cylinder housing by using a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent). Before further flight after determining the part number, accomplish the requirements in paragraph (g)(1) or (g)(2) of this AD, as applicable.

Note 1: Airbus Service Bulletins A330–27–3113, Revision 04, dated June 13, 2006; and A340–27–4139, Revision 01, dated June 12, 2006; refer to LIEBHERR Service Information Letters, SIL 142, Revision 2, dated September 28, 2005; and SIL 190, dated September 27, 2005; respectively, as additional sources of service information for accomplishing the actions required by paragraphs (f) and (g) of this AD.

Action Not Required

(h) Airbus Service Bulletins A330–27–3113, Revision 04, dated June 13, 2006; and A340–27–4139, Revision 01, dated June 12, 2006; recommend providing LIEBHERR-AEROSPACE with the part number and serial number of the cylinder housing of the SSC if the identification plate is missing; this AD requires identifying the part number of the SSC cylinder housing by using a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

Actions Done According to Previous Issues of Service Bulletins

(i) Accomplishing the actions specified in paragraph (f) of this AD is acceptable for compliance with the requirements of that paragraph if done before the effective date of this AD in accordance with the applicable service bulletin identified in Table 1 of this AD.

TABLE 1.—AIRBUS SERVICE BULLETINS

Service bulletin	Revision level	Date
A330–27–3113	Original	September 15, 2003.
A330–27–3113	Revision 01	October 3, 2003.
A330–27–3113	Revision 02	June 11, 2004.
A330–27–3113	Revision 03	March 17, 2006.
A340–27–4139	Original	March 17, 2006.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM–116, 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

(k) EASA airworthiness directives 2006–0158 and 2006–0159, both dated June 7, 2006, also address the subject of this AD.

Issued in Renton, Washington, on December 19, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22281 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26706; Directorate Identifier 2006–NM–216–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 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 certain Airbus Model A319, A320, and A321 airplanes. This proposed AD would require installing spacer assemblies at the attachment points of the YZ–latches of the cargo loading system in the forward and aft cargo compartments, as applicable. This proposed AD results from tests that have shown that the attachment points of the YZ-latches of the cargo loading system fail under maximum loads. We are proposing this AD to prevent failure of the attachment points of the YZ-latches, which could result in unrestrained cargo causing damage to the fire protection system, hydraulic system, electrical wiring, or other equipment located in the forward and aft cargo compartments. This damage could adversely affect the continued safe flight of the airplane.

DATES: We must receive comments on this proposed AD by January 29, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* 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 9:00 a.m. and 5:00 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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–2006–26706; Directorate Identifier 2006–NM–216–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 certain Airbus Model A319, A320, and A321 airplanes. The EASA advises that tests have revealed that the attachment points of the YZ-latches of the cargo loading system fail under maximum loads. Unrestrained cargo parts, if not corrected, could result in damage to the fire protection system, hydraulic system, electrical wiring, or other equipment located in the forward and aft cargo compartments. This damage could adversely affect the continued safe flight of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A320–25–1294, Revision 01, dated March 27, 2006. The service bulletin describes procedures for installing spacer assemblies (supporting ring with spring ring) at the attachment points of the YZ-latches of the cargo loading system in the forward and aft cargo compartments, as applicable. 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 2006–0184, dated July 3, 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 airplanes 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, except as discussed under ''Difference Between the Proposed AD and EASA Airworthiness Directive.''

Differences Between the Proposed AD and EASA Airworthiness Directive

The applicability of EASA airworthiness directive 2006–0184 excludes airplanes on which Airbus Service Bulletin A320–25–1294 has been accomplished in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in Revision 01 of that service bulletin. This requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

This proposed AD would affect about 1 airplane of U.S. registry. The proposed actions would take about 4 work hours per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $2,049 per airplane. Based on these figures, the estimated cost of the proposed AD for the U.S. operator is $2,369.

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–2006–26706; Directorate Identifier 2006–NM–216–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319, A320, and A321 airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category. This AD excludes Airbus Model A319, A320, and A321 airplanes identified in paragraph (c)(3) of this AD, certificated in any category.

(1) Including airplanes on which one the following has been incorporated in production: Airbus Modification 20065, 20040, 24495, 24848, 24496, 21895, 21896, 25905, 25907, 22601, 22602, 27187, 28319, 28322, 28330, 28335, or 31797.

(2) Including airplanes on which one of the following has been incorporated in service: Airbus Service Bulletin A320–25–1132, A320–25–1133, A320–25–1145, A320–25–1175, A320–25–1177, A320–25–1276, A320–25–1278, A320–28–1134, or A320–28–1141.

(3) Excluding airplanes on which both Airbus Modifications 32244 and 32245, or both Airbus Modifications 32316 and 32317, have been incorporated in production.

Unsafe Condition

(d) This AD results from tests that have shown that the attachment points of the YZ-latches of the cargo loading system fail under maximum loads. We are issuing this AD to prevent failure of the attachment points of the YZ-latches, which could result in unrestrained cargo causing damage to the fire protection system, hydraulic system, electrical wiring, or other equipment located in the forward and aft cargo compartments. This damage could adversely affect the continued safe flight of the airplane.

Compliance

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

Installation

(f) Within 36 months after the effective date of this AD, install spacer assemblies at the attachment points of the YZ-latches of the cargo loading system in the forward and aft cargo compartments, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1294, Revision 01, dated March 27, 2006.

Credit for Actions Done According to Previous Issue of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–25–1294, dated March 14, 2003, are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

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) European Aviation Safety Agency (EASA) airworthiness directive 2006–0184, dated July 3, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on December 19, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22280 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25391; Directorate Identifier 2006–NM–097–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 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 NPRM for an airworthiness directive (AD) that applies to certain Fokker Model F.28 Mark 0070 and 0100 airplanes. The original NPRM would have superseded an existing AD that currently requires a one-time inspection of the sliding members in the main landing gear (MLG) for cracking and replacement of the sliding members with serviceable parts if necessary. The original NPRM proposed to require repetitive magnetic particle inspections of the sliding members of the MLG for cracking and corrective actions as necessary. The original NPRM resulted from inspection findings that have shown repetitive inspections are needed to establish fleet safety. This new action revises the original NPRM by correcting a certain part number in the applicability. We are proposing this supplemental NPRM to detect and correct fatigue cracking of the sliding member, which could result in possible separation of the MLG from the airplane and consequent reduced controllability of the airplane upon landing and possible injury to passengers.

DATES: We must receive comments on this supplemental NPRM by January 22, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* 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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposal. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–25391; Directorate Identifier 2006–NM–097–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 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 **ADDRESSES.** Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) (the ''original NPRM'') to amend 14 CFR part 39 to include an AD that supersedes AD 2004–08–01, amendment 39–13570 (69 FR 19759, April 14, 2004). The existing AD applies to certain Fokker Model F.28 Mark 0070 and 0100 airplanes. The original NPRM was published in the **Federal Register** on July 19, 2006 (71 FR 40945). The original NPRM proposed to continue to require a one-time inspection of the sliding members in the main landing gear (MLG) for cracking and replacement of the sliding members with serviceable parts if necessary. That NPRM also proposed to require repetitive magnetic particle inspections of the sliding members of the MLG for cracking and corrective actions as necessary.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, we have discovered a typographical error in the applicability of AD 2004–08–01 and the original NPRM. Table 1 of AD 2004–08–01 and the original NPRM incorrectly identified MLG part number (P/N) 201012014. We have revised Table 1 of the supplemental NPRM to refer to P/N 201072014.

Comments

We have considered the following comment on the original NPRM.

Request To Publish Service Information

The Modification and Replacement Parts Association (MARPA) states that, typically, ADs are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are privately authored instruments generally having copyright protection against duplication and distribution. MARPA notes that when a service document is incorporated by

reference into a public document, such as an AD, it loses its private, protected status and becomes a public document. MARPA adds that if a service document is used as a mandatory element of compliance, it should not simply be referenced, but should be incorporated into the regulatory document; by definition, public laws must be public, which means they cannot rely upon private writings. MARPA adds that incorporated by reference service documents should be made available to the public by publication in the Docket Management System (DMS), keyed to the action that incorporates them. MARPA notes that the stated purpose of the incorporation by reference method is brevity, to keep from expanding the **Federal Register** needlessly by publishing documents already in the hands of the affected individuals; traditionally, ''affected individuals'' means aircraft owners and operators, who are generally provided service information by the manufacturer. MARPA adds that a new class of affected individuals has emerged, since the majority of aircraft maintenance is now performed by specialty shops instead of aircraft owners and operators. MARPA notes that this new class includes maintenance and repair organizations, component servicing and repair shops, parts purveyors and distributors, and organizations manufacturing or servicing alternatively certified parts under section 21.303 (''Replacement and modification parts'') of the Federal Aviation Regulations (14 CFR 21.303). MARPA adds that the concept of brevity is now nearly archaic as documents exist more frequently in electronic format than on paper. Therefore, MARPA asks that the service documents deemed essential to the accomplishment of the NPRM be incorporated by reference into the regulatory instrument, and published in the DMS.

We do not agree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. A final rule incorporates by reference the documents necessary for the accomplishment of the requirements mandated by the AD. Further, we point out that while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information.

In regard to the commenter's request to post service bulletins on the Department of Transportation's DMS, we are currently in the process of reviewing issues surrounding the posting of service bulletins on DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to the supplemental NPRM is necessary in response to this comment.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The change discussed above expands 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.

Costs of Compliance

This proposed AD would affect about 37 airplanes of U.S. registry.

The inspection that is required by AD 2004–08–01 and retained in this proposed AD takes either about 4 or 12 work hours per airplane, depending on airplane configuration, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the currently required actions is either $320 or $960 per airplane, depending on airplane configuration.

The new proposed inspections would take about 2 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 $5,920, or $160 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 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 removing amendment 39–13570 (69 FR 19759, April 14, 2004) and adding the following new airworthiness directive (AD):

Fokker Services B.V.: Docket No. FAA–2006–25391; Directorate Identifier 2006–NM–097–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by January 22, 2007.

Affected ADs

(b) This AD supersedes AD 2004–08–01.

Applicability

(c) This AD applies to Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category; equipped with any Dowty or Messier-Dowty main landing gear (MLG) listed in Table 1 of this AD.

TABLE 1.—AFFECTED PARTS

MLG part number (P/N)	Equipped with sliding member P/N
201072011	201072301 or 201072305
201072012	201072301 or 201072305
201072013	201072301 or 201072305
201072014	201072301 or 201072305
201072015	201072301 or 201072305
201072016	201072301 or 201072305

Unsafe Condition

(d) This AD results from inspection findings that have shown repetitive inspections are needed to establish fleet safety. We are issuing this AD to detect and correct fatigue cracking of the sliding member, which could result in possible separation of the MLG from the airplane and consequent reduced controllability of the airplane upon landing and possible injury to passengers.

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.

Requirements of AD 2004–08–01

Inspection and Replacement if Necessary

(f) Within 1,000 flight cycles or six months after May 19, 2004 (the effective date of AD 2004–08–01), whichever occurs first, perform a magnetic inspection of the sliding members of the MLG for cracking, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–133, dated April 1, 2002. If any crack is found during the inspection, before further flight, replace the sliding members with serviceable parts in accordance with the Accomplishment Instructions of the service bulletin.

Note 1: Fokker Service Bulletin SBF100–32–133, dated April 1, 2002, refers to Messier-Dowty Service Bulletin F100–32–103, dated March 11, 2002, as an additional source of service information.

Parts Installation With Accomplishment of New Service Bulletins

(g) As of May 19, 2004, no person may install a sliding member of the MLG, P/N 201072301 or P/N 201072305, on any airplane, unless it has been inspected in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–133, dated April 1, 2002; Fokker Service Bulletin SBF100–32–139, dated March 5, 2004; or Fokker Service Bulletin SBF100–32–144, dated September 19, 2005; and found to be serviceable.

Note 2: Fokker Service Bulletin SBF100–32–139, dated March 5, 2004, refers to Messier-Dowty Service Bulletin F100–32–105, dated March 2, 2004, as an additional source of service information for accomplishing a magnetic inspection.

Note 3: Fokker Service Bulletin SBF100–32–144, dated September 19, 2005, refers to Messier-Dowty Service Bulletin F100–32–110, dated August 25, 2005, as an additional source of service information for accomplishing a magnetic inspection.

Reporting Requirement Difference

(h) Although Fokker Service Bulletin SBF100–32–133, dated April 1, 2002, specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

New Requirements of This AD

Repetitive Inspections

(i) At the later of the compliance times specified in paragraphs (i)(1) and (i)(2) of this AD: Do a magnetic inspection of the sliding members of the left and right MLG for cracking, and do all corrective actions before further flight after the inspection, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–144, dated September 19, 2005. Repeat the inspection thereafter at intervals not to exceed 2,000 flight cycles.

(1) Within 2,000 flight cycles after accomplishing paragraph (f) of this AD.

(2) Within 4 months after the effective date of this AD.

Credit for Fokker Service Bulletin SBF100–32–139

(j) Actions done before the effective date of this AD in accordance with Fokker Service Bulletin SBF100–32–139, dated March 5, 2004, are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(l) Dutch airworthiness directive NL–2005–012, dated October 17, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on December 19, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–22279 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 505

[FHWA Docket No. FHWA–05–23393]

RIN 2125–AF08

Projects of National and Regional Significance Evaluation and Rating

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FHWA is reopening the comment period for the notice of proposed rulemaking (NPRM) and request for comments, which was published on July 24, 2006, at 71 FR 41748. That NPRM proposed to establish the required evaluation and rating guidelines for projects proposed under the Projects of National and Regional Significance (PNRS) program. The original comment period closed on September 22, 2006. The extension is based on the desire of the FHWA to receive the fullest and most comprehensive comments possible from the broadest group of stakeholders. During the initial analysis of comments the FHWA recognized that a number of subject areas were not commented upon, and significant segments of the transportation stakeholder community did not respond. The FHWA believes that those interested in commenting on this important program may not have had the opportunity to provide comments and that the comment period should be reopened. Therefore, the comment period is being reopened until February 9, 2007, which will provide those interested in commenting additional time to discuss, evaluate, and submit responses to the docket.

DATES: Comments must be received on or before February 9, 2007.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit* or fax comments to (202) 366–7909. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or print the acknowledgement page that appears

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

FOR FURTHER INFORMATION CONTACT: Mr. Edward Strocko, Office of Freight Management and Operations, (202) 366–2997; or Ms. Alla Shaw, Office of the Chief Counsel, (202) 366–0764, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. Alternatively, internet users may access all comments received by the DOT Docket Facility by using the universal resource locator (URL) *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: *http://www.archives.gov* or the Government Printing Office's Web page at: *http://www.gpoaccess.gov/nara*.

Background

The Projects of National and Regional Significance program established under section 1301 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59) is intended to finance critical, high-cost transportation infrastructure facilities that address critical national economic and transportation needs. These projects often involve multiple levels of government, agencies, modes of transportation, and transportation goals and planning processes that are not easily addressed or funded within existing surface transportation program categories. Projects of National and Regional Significance would have national and regional benefits, including improving economic productivity by facilitating international trade, relieving congestion, and improving transportation safety by facilitating passenger and freight movement. Additionally, this program would further the goals of the Secretary's Congestion Initiative.[1]

The benefits of PNRS would accrue beyond local areas and States to the Nation as a whole. A program dedicated to constructing PNRS would improve the safe, secure, and efficient movement of people and goods throughout the United States as well as improve the health and welfare of the national economy.

On July 24, 2006, at 71 FR 41748, the FHWA published a NPRM proposing the establishment of regulations for 23 CFR 505, the evaluation and rating guidelines for projects proposed for funding under the PNRS program. The FHWA is looking for specific and detailed comments that contribute to the definition of grant criteria, project eligibility, project ratings, and the nature and form of full funding grant agreements. The FHWA specifically invites comments that contribute to an understanding and a quantification of criteria related to congestion, system throughput, safety, technology, private contributions and national and/or regional economic benefits.

The original comment period for the NPRM closed on September 22, 2006. The FHWA recognizes that additional time will allow interested parties a broader and more comprehensive review and discussion of the proposed regulations; and then, allow the development and submission of complete responses to the docket. To allow time for interested parties to submit comprehensive comments, the comment period is being reopened until February 9, 2007.

Authority: 23 U.S.C. 101(a), 104, 109(d), 114(a), 217, 315, and 402(a); 23 CFR 1.32 and 49 CFR 1.48(b).

Issued on: December 21, 2006.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E6–22322 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–22–P

[1] Speaking before the National Retail Foundation's annual conference on May 16, 2006, in Washington, DC, former U.S. Transportation Secretary Norman Mineta unveiled a new plan to reduce congestion plaguing America's roads, rail and airports. The National Strategy to Reduce Congestion on America's Transportation Network includes a number of initiatives designed to reduce transportation congestion and is available at the following URL: *http://isddc.dot.gov/OLPFiles/OST/012988.pdf*.

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD–2006–HA–0149; RIN 0720-AB01]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE: Implementation of Changes to the Pharmacy Benefits Program; Double Coverage With Medicare Part D

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: TRICARE eligible beneficiaries, who are entitled to Medicare Part A on the basis of age, disability, or end-stage renal disease, maintain their TRICARE eligibility when they are enrolled in the supplementary medical insurance program under Part B of Medicare. In general, in the case of medical or dental care provided to these individuals for which payment may be made under both Medicare and TRICARE, Medicare is the primary payer and TRICARE will normally pay the actual out-of-pocket costs incurred by the person. This proposed rule prescribes double coverage payment procedures and makes revisions to TRICARE rules to accommodate beneficiaries who are eligible under both Medicare and TRICARE, and who participate in Medicare's outpatient prescription drug program under Medicare Part D. These revisions are necessary because of the requirements contained in the Centers for Medicare and Medicaid Services (CMS) final rule for the Medicare Prescription Drug Benefit, Part D Plans with Other Prescription Drug Coverage.

This proposed rule also establishes requirements and procedures for implementation of the improvements to the TRICARE Pharmacy Benefits Program directed by section 714 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA FY 05) (Public Law 108–365). The rule clarifies that the cost-sharing requirements for Medicare-eligible beneficiaries may not be in excess of the cost-sharing requirements applicable to other retirees, their dependents, former spouses and survivors. Additionally, the rule authorizes the DoD Pharmacy and Therapeutics Committee to make a separate and additional determination of the relative clinical and cost effectiveness of pharmaceutical agents to assure pharmacies of the uniformed services have on their formularies pharmaceutical agents that provide greater value than other uniform formulary agents in that therapeutic

class. This rule also describes the transition process that will occur as the uniform formulary is developed and uniform service facilities move to a uniform formulary, consistent with their scope of practice.

DATES: Comments on this proposed rule will be accepted until February 26, 2007.

ADDRESSES: You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: MAJ Travis Watson, TRICARE Management Activity, Pharmacy Directorate, telephone (703) 681–2890 x6707.

SUPPLEMENTARY INFORMATION:

I. Double Coverage With Medicare Part D

Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), (Pub. L. 108–173), amended Title XVIII of the Social Security Act by establishing a new Part D: the Voluntary Prescription Drug Benefit Program (henceforth, Medicare Part D). The Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), published their Final Rule on January 28, 2005 (70 FR 4193—4585). The addition of a prescription drug benefit to Medicare represents a landmark change to the Medicare program, and became available to beneficiaries beginning on January 1, 2006.

The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398), established the TRICARE Senior Pharmacy Program under section 711 (which was effective April 1, 2001). The Act also under section 712 (which was effective October 1, 2001) continued TRICARE eligibility for beneficiaries entitled to Medicare Part A on the basis of age, provided they also are enrolled in Medicare Part B. This program has come to be known as TRICARE for Life. Under section 701 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65), codified at Title 10, United States Code, Section 1074g, the Department established its new pharmacy benefits program for all TRICARE beneficiaries (as implemented by 32 CFR 199.21). The full implementation of the pharmacy benefits program was not effective until May 3, 2004, however, changes in pharmacy cost shares were effective with the implementation of TRICARE Senior Pharmacy on April 1, 2001.

In implementing TRICARE Senior Pharmacy, DoD stated that the double coverage rules in 32 CFR 199.8 are applicable to services provided to all beneficiaries under the retail pharmacy network, retail pharmacy non-network, or TRICARE Mail Order programs. In implementing TRICARE for Life, DoD explained the double coverage rules under 10 U.S.C. 1086(d)(3). The statute states that if a TRICARE-Medicare dual-eligible beneficiary receives medical or dental care for which payment may be made under Medicare and TRICARE, the amount payable for that care by TRICARE shall be the amount of the actual out-of-pocket costs incurred by the person for that care over the sum of (i) the amount paid for that care under Medicare; and (ii) the total of all amounts paid or payable by third party payers other than Medicare. The amount payable by TRICARE may not exceed the total amount that would be paid under TRICARE if payment for the care were made solely under TRICARE. TRICARE for Life did not expand the scope of benefits available to this group of beneficiaries beyond the scope of TRICARE benefits available to other retirees and their families. The critical fact is whether the service or supply is payable by both Medicare and TRICARE. For health care services for which payment may be made under both Medicare and TRICARE, TRICARE will pay up to the beneficiary's legal liability the actual out-of-pocket costs incurred by the beneficiary, less any payments made by Medicare or other sources of insurance). Actual out-of-pocket costs incurred by the beneficiary include the initial deductible, which are for services payable by Medicare and TRICARE, but for the fact that the beneficiary has not met the deductible amount, and any subsequent beneficiary cost shares. However, if a health care service or supply is a benefit payable only by Medicare, but not TRICARE, then Medicare has sole responsibility for payment of the health care service or supply, as defined by Medicare, and the beneficiary has the responsibility to pay any corresponding Medicare cost-share or deductible. Likewise, if a health care service or supply is a benefit payable only by TRICARE, but not Medicare, then TRICARE has sole responsibility for payment of the health care service and supply, and the beneficiary has the responsibility to pay any corresponding TRICARE cost-shares or deductible. Finally, if a health care service or supply is neither a benefit payable by Medicare or TRICARE, the beneficiary pays the total cost.

TRICARE has applied the double coverage rules of 32 CFR 199.8 to the Pharmacy Benefits Program under section 199.21(m), and said to the extent they provide a prescription drug benefit, Medicare supplemental insurance plans or Medicare HMO plans are double coverage plans and will be primary payer. This rule was written prior to Medicare providing a prescription drug benefit under Medicare Part D, and CMS's final rule on the Medicare Prescription Drug Benefit. Under 42 CFR part 423, Subpart J, Coordination of Part D Plans With Other Prescription Drug Coverage, section 423.464(f)(1)(iv), military coverage, including TRICARE coverage under chapter 55 of title 10, United States Code, qualifies as other prescription drug coverage with which a Part D plan must coordinate benefits.

Medicare Part D plans are offered by private insurance companies that contract with CMS. Part D benefits may be offered by a stand-alone prescription drug plan sponsor, a Medicare Advantage Organization offering qualified prescription drug coverage, a Program for All-Inclusive Care for the Elderly (PACE) organization offering qualified prescription drug coverage, or a cost plan offering qualified prescription drug coverage (collectively referred to as a ''Part D plan sponsor''). Each Part D plan sponsor submits a bid to CMS for plan benefit packages, which results in, among other things, the offering of Part D plans with varying monthly premiums and benefits designs. Part D plan sponsors may offer a defined standard benefit, which is the type of benefit used as an example in this preamble, or an actuarially equivalent standard benefit. Part D plan sponsors may also offer alternative prescription drug coverage, which may consist of basic alternative coverage or enhanced alternative coverage. Therefore depending on the Part D plan that a beneficiary chooses, monthly premiums, coinsurances, co-pays, deductibles and benefit design may vary from plan to plan. Under the MMA,

certain low-income beneficiaries may be eligible for reduced premiums and cost-sharing for their drug coverage. In some cases, beneficiaries pay no premium and nominal cost-sharing. Other beneficiaries have a reduced premium and lower cost-sharing.

The standard Part D benefit includes several phases of beneficiary spending, as described below.

Premiums. Statute requires a beneficiary to pay a monthly premium to participate in the plan. A beneficiary who wants to participate in a standard Medicare Part D plan is solely responsible for payment of any premium that is not otherwise subsidized under the program. Beneficiary premiums do not count toward any required beneficiary cost-sharing to reach the deductible, coverage gap, or catastrophic limit (described below).

Deductible. Under the Medicare Part D defined standard benefit, the beneficiary is responsible for paying an out-of-pocket deductible ($265 in 2007) that adjusts annually according to the annual percentage increase in spending on covered Part D drugs. For purposes of meeting the deductible, both spending by the beneficiary and spending by TRICARE on behalf of the beneficiary (i.e., the TRICARE wraparound coverage) qualify.

Cost-sharing between deductible and coverage gap. After the deductible is met, the standard Part D plan sponsors are responsible for 75% of the actual cost of the covered Part D drug, and the beneficiary is responsible for 25% of the actual cost of the covered Part D drug, until the beneficiary reaches the coverage gap. TRICARE wraparound coverage qualifies as beneficiary cost-sharing between the deductible and coverage gap.

Coverage gap. To reach the coverage gap, the beneficiary must reach a statutorily-specified amount of total drug spending. Total beneficiary spending needed to meet the coverage gap is defined as beneficiary out-of-pocket spending, or TRICARE spending on behalf of the beneficiary, and spending by the Part D plan sponsor. In 2007, a beneficiary reaches the coverage gap when he has incurred $2,400 in total drug spending and remains in the gap until he has incurred $3,850 in beneficiary out-of-pocket spending. Individuals who qualify for the low-income subsidies pay lower cost-sharing amounts before they reach the coverage gap. In the coverage gap, the beneficiary is responsible for 100% of the cost of the drug, although the beneficiary by law is entitled to receive the plan's negotiated price. Individuals who qualify for low-income subsidies do not have a coverage gap.

Catastrophic threshold. To reach the catastrophic threshold defined in the standard benefit, the beneficiary must have incurred total spending defined in statute as true out-of-pocket spending (TrOOP) ($3,850 in 2007). In the catastrophic phase, the beneficiary is responsible for the greater of 5% of the cost of the drug, or, in 2007, $2.15 for a generic/preferred multi-source drug or $5.35 for other drugs. In the catastrophic phase of the defined standard benefit, the Part D plan sponsor and Medicare are responsible for what is not paid by the beneficiary up to the Part D plan sponsor's negotiated price.

Under 42 CFR 423.100, incurred costs means costs incurred by the Part D enrollee for covered Part D drugs—(1) That are not paid for under the Part D plan as a result of application of any annual deductible or other cost-sharing rules for covered Part D drugs prior to the Part D enrollee satisfying annual out-of-pocket threshold amount under section 423.104(d)(5)(iii); and (2) That are paid for by the Part D enrollee or on behalf of the enrollee by another person, and the enrollee or other person is not reimbursed through insurance or otherwise, a group health plan or other third party arrangement. Because TRICARE falls under the definition of ''or otherwise,'' which refers to ''government-funded health programs,'' wraparound payments made by TRICARE for covered Part D drugs on behalf of an enrollee eligible for both Part D and TRICARE do not count towards beneficiary incurred costs. Therefore, for purposes of reaching the catastrophic limit, only true beneficiary out-of-pocket spending (TrOOP) counts as beneficiary spending. Although TRICARE supplementary coverage counts toward meeting the deductible and the initial coverage limit, it does not count toward meeting the catastrophic threshold.

Generally, a Part D plan is primary payer under 42 CFR 423.464, coordination of benefits with other providers of prescription drug coverage, which includes military coverage (including TRICARE) under chapter 55 of title 10, United States Code. A Part D plan under section 423.464(f)(2) must exclude expenditures for covered Part D drugs made by TRICARE for purposes of determining whether a Part D enrollee has satisfied the out-of-pocket threshold, which for 2007 is $3,850.

As a result of these provisions implementing Medicare Part D, TRICARE double coverage rules must be modified. If a TRICARE-Medicare beneficiary enrolls in a Part D plan that adds prescription coverage to their Medicare plan, the Medicare Part D plan is generally primary payer and TRICARE is secondary payer. TRICARE will pay the beneficiary's out-of-pocket costs for Medicare and TRICARE covered medications, including the initial deductible and Medicare Part D cost-share. TRICARE will not pay the beneficiary's out-of-pocket cost associated with any monthly premium required to enroll in and participate in the Medicare Part D plan.

In the coverage gap, the Part D plan is generally still the primary payer. Thus, assuming the beneficiary is accessing a pharmacy under contract with his or her Part D plan, the pharmacy would bill the Part D plan, which would respond by indicating that it is responsible for $0, at which point the pharmacy would bill TRICARE. When the beneficiary becomes responsible for 100% of the drug costs in the coverage gap, the beneficiary may use the TRICARE pharmacy benefit as the secondary payer. TRICARE will cost share during the coverage gap to the same extent as it does under section 199.21 for beneficiaries not enrolled in a Medicare Part D plan. The beneficiary is responsible for the applicable TRICARE pharmacy cost-sharing amounts (and deductible if using a retail non-network pharmacy). During the coverage gap, TRICARE is incurring the cost of the drugs during the Medicare Part D coverage gap and not the beneficiary. Thus none of the costs of the drugs borne by TRICARE will be applied to meeting the beneficiary's annual Medicare Part D true out-of-pocket (TrOOP) threshold. Generally, however, the beneficiary's own TRICARE pharmacy benefit cost-share will accrue to meeting his/her annual Medicare Part D TrOOP spending because this cost-sharing is an actual out-of-pocket expense incurred by the beneficiary. Any actual out-of-pocket expense incurred by the beneficiary also will apply toward the TRICARE fiscal year catastrophic cap.

Similarly, if the TRICARE-Medicare dual-eligible beneficiary enrolls in a Medicare Advantage drug plan, the beneficiary has to pay the plan's monthly premiums and obtain all medical care and prescription drugs through the Medicare Advantage plan. The Medicare Advantage plan will generally be the primary payer, and TRICARE will be the secondary payer. If the Medicare Advantage plan has a Part D drug benefit, TRICARE will pay secondary as described above.

II. Legislative Changes for TRICARE-Medicare Dual-Eligible Beneficiaries

Section 701 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65), codified at Title 10, United States Code, Section 1074g, directs the Department to establish an effective, efficient, integrated pharmacy benefits program. The Department published the final rule on the Pharmacy Benefits Program on April 1, 2004 (69 FR 17035–17052) implementing the pharmacy benefits program, effective May 3, 2004. Congress in section 714 of the Ronald W. Reagan NDAA for FY 05 has directed certain improvements to the TRICARE pharmacy benefits program.

Section 714(a) directs that for a TRICARE-Medicare dual-eligible beneficiary, the cost-sharing requirements under the pharmacy benefits program may not be greater than the cost-sharing requirements applicable to all other beneficiaries covered by 10 U.S.C. 1086, which are beneficiaries who are retirees, their authorized dependents, survivors, and certain former spouses. Under 10 U.S.C. 1074g(a)(6), the Department may establish cost-sharing requirements for the pharmacy benefits program, which may be established as a percentage or fixed dollar amount, for generic, formulary, and non-formulary pharmaceutical agents. For non-formulary agents, cost-sharing shall be consistent with common industry practice and not in excess of amounts generally comparable to 20 percent for beneficiaries who are dependents of active duty members of the uniformed services, and 25 percent for beneficiaries who are retirees, their authorized dependents, survivors, and certain former spouses.

In the TRICARE Pharmacy Benefits Program final rule, the Department published the cost share amounts for pharmaceutical agents based upon two factors: (1) The agent's status as generic, formulary, or non-formulary; and (2) the venue in which the agent was obtained, that is, military treatment facility (MTF), TRICARE Mail Order Program (TMOP), retail network pharmacy, or retail non-network pharmacy. The Department is authorized under 10 U.S.C. 1074g(a)(6) to have two non-formulary cost-shares based upon the status of the beneficiary, no more than 20 percent for active duty family members and no more than 25 percent for all others (other than active duty members who have no cost share). The Department chose to have one non-formulary cost-share equal to no more than 20 percent of the anticipated aggregated cost of non-formulary agents that is $22 for non-formulary agents obtained in the TMOP or retail network pharmacies, and $22 or 20 percent (whichever is greater) for non-formulary agents obtained in retail non-network pharmacies. *(For more information on TRICARE Pharmacy Benefit Program cost shares, see Section 199.21(i)).* Section 714(a) emphasizes that if the Department were to move to a two-tier non-formulary cost-share based upon the status of the beneficiary, the Department may not have a higher cost-share for TRICARE-Medicare dual-eligible beneficiaries than for other retirees, their authorized dependents, survivors, and certain former spouses. The Department has no intention at this time of establishing two separate non-formulary cost-shares based upon the status of the beneficiary as an active duty family member or other category of beneficiary.

This proposed rule adds to § 199.21 a provision incorporating into the regulation the new statutory requirement.

III. Legislative Changes To Improve the Uniform Formulary Process

Under 10 U.S.C. 1074g(a)(2)(E)(i), pharmaceutical agents included on the uniform formulary on the basis of relative clinical effectiveness and cost effectiveness are required to be available to beneficiaries through facilities of the uniformed services, consistent with the scope of health care services offered in such facilities. Section 714(b) of the Ronald W. Reagan NDAA for FY 05 directs the Department to allow the DoD Pharmacy and Therapeutics Committee (P&T Committee) to make additional relative clinical and cost effectiveness determinations for military treatment facilities (MTFs). This change in the law means that MTFs are not required to include on their formularies every pharmaceutical agent in a therapeutic class that is on the uniform formulary that is consistent with the scope of health care services offered in the MTF. This proposed rule incorporates into section 199.21 a provision reflecting the change in statute.

IV. Transition to the Uniform Formulary

The DoD P&T Committee is required under section 199.21 to make recommendations concerning which pharmaceutical agents should be on the uniform formulary and the Basic Core Formulary (BCF), and may now make recommendations concerning which agents should be on the Extended Core Formulary (ECF). The BCF contains the minimum set of pharmaceutical agents that each MTF pharmacy must have on its formulary to support the primary care scope of practice for Primary Care Manager enrollment sites. The ECF contains the minimum set of pharmaceutical agents that each MTF pharmacy must have on its formulary to support an extended care scope of practice if the MTF Pharmacy and Therapeutics Committee has authorized agents in that class based upon the scope of practice at that facility.

The DoD Pharmacy and Therapeutics Committee will review the classes in a methodical but expeditious manner, taking into consideration circumstances that may include but are not limited to: DoD national contracting, or DoD and Veterans Affairs national joint contracting or other agreements with pharmaceutical manufacturers; approval of a new drug by FDA; approval of a new indication for an existing drug; changes in the clinical use of existing drugs; new information concerning the safety, effectiveness or clinical outcomes of existing drugs; price changes; shifts in market share; scheduled review of a therapeutic class; and requests from DoD P&T Committee members, military treatment facilities, or other Military Health System officials. During the transition period from the previous methodology of formulary management involving only the MTFs and the TRICARE Mail Order Program, previous decisions by the DoD P&T Committee or committed use requirements contracts executed by DoD, or jointly by DoD and VA, shall continue in effect. This is necessary to comply with the statutory requirements of 38 U.S.C. 8111 and 10 U.S.C. 1104 relating to resource sharing between DoD and VA, and allow time to incorporate the impact of uniform formulary management into those agreements. As therapeutic classes are reviewed under the new formulary management process and pharmaceutical agents are designated for formulary or non-formulary status, this transition methodology shall apply.

The P&T Committee will meet at least quarterly to review new and existing drugs and drug classes, and recommend pharmaceutical agents for inclusion on or exclusion from the uniform formulary after evaluating their relative clinical and cost effectiveness. Pending review of a pharmaceutical agent or class, previous decisions by the predecessor to the P&T Committee regarding national contracts, agreements, formulary status, BCF status, pre-authorization requirements and quantity limits shall remain in effect. The P&T Committee will eventually evaluate all applicable drug classes at which time the transition period will be complete.

During this transition period, pharmaceutical agents in drug classes not yet evaluated by the P&T Committee will continue to be available from the TRICARE Mail Order Pharmacy (TMOP) and the TRICARE Retail Pharmacy network at either the generic or formulary (brand) cost share. MTFs may evaluate for inclusion on the MTF formulary pharmaceutical agents in drug classes that do not already have BCF status, or have not yet been evaluated by the P&T Committee. BCF listed agents must be on the formulary at all full-service MTF pharmacies at all times.

V. Regulatory Procedures

Executive Order 12866 directs agencies to assess all costs and benefits available, regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the national economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. DoD has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action as it addresses novel policy issues relating to implementation of coordination of medical benefits programs for covered beneficiaries of the uniformed services under TRICARE and the Medicare Prescription Drug Benefit. Thus, this rule has been reviewed by the Office of Management and Budget under E.O. 12866. The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities.

This proposed rule is not a major rule under the Congressional Review Act, because its economic impact will be less than $100 million. There are approximately 1.9 million TRICARE-Medicare dual-eligible beneficiaries, and approximately 7% have enrolled in Medicare Part D plans. For those who have Medicare Part D coverage, the cost of their pharmacy benefit to DoD is less, as Medicare Part D Plans are the first payer as opposed to DoD, resulting in a cost avoidance for DoD. The amount of the cost avoidance is directly related to the number and cost of prescriptions filled by beneficiaries for which Medicare is first payer. Under the standard benefit package, there is a potential of about $1,601.25 in DoD cost avoidance (in 2007) for Medicare/TRICARE Part D enrollees whose drug spending is high enough to enter the Medicare coverage gap. For beneficiaries with lower drug spending, DoD's cost avoidance would also be lower. In addition, this rule will have minor impact and will not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This proposed rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 55). In order to determine which dual-eligible beneficiaries are participating in Medicare Part D, TRICARE will rely on the Defense Eligibility Enrollment Reporting System (DEERS) to identify which beneficiaries are enrolled in Medicare Part D through existing data sharing agreements with CMS and will not need to collect additional information from them.

We have examined the impact(s) of the proposed rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Health care, Health insurance, Military personnel, Pharmacy benefits.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.8 is amended by adding paragraph (d)(1)(iii)(C) and revising paragraph (d)(1)(vi) to read as follows:

§ 199.8 Double coverage.

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(C) For Medicare beneficiaries who enroll in Medicare Part D, the Part D plan is primary and TRICARE is secondary payer. TRICARE will pay the beneficiary's out-of-pocket costs for Medicare and TRICARE covered medications, including the initial deductible and Medicare Part D cost sharing amounts up to the initial coverage limit of the Medicare Part D plan. The Medicare Part D plan, although the primary plan pays nothing during any coverage gap period. When the beneficiary becomes responsible for 100 percent of the drug costs under a Part D coverage gap period, the beneficiary may use the TRICARE pharmacy benefit as the secondary payer. TRICARE will cost share during the coverage gap to the same extent as it does under § 199.21 for beneficiaries not enrolled in a Medicare Part D plan. The beneficiary is responsible for the applicable TRICARE pharmacy cost-sharing amounts (and deductible if using a retail non-network pharmacy). Part D plan sponsors may offer a defined standard benefit, or an actuarially equivalent standard benefit. Part D plan sponsors may also offer alternative prescription drug coverage, which may consist of basic alternative coverage or enhanced alternative coverage. Therefore depending on the Part D plan that a beneficiary chooses, monthly premiums, coinsurances, co-pays, deductibles and benefit design may vary from plan to plan. TRICARE payment of the beneficiary's initial deductible, if any, along with payment of any beneficiary cost share count towards total spending on drugs, and may have the effect of moving the beneficiary more quickly through the initial phase of coverage to the coverage gap. Irrespective of the phase of the benefit in which a beneficiary may be, if a beneficiary is accessing a pharmacy under contract with his or her Part D plan, the provider will bill the Part D plan first, then TRICARE. If the beneficiary chooses to use his or her TRICARE pharmacy benefit during a coverage gap under Part D, the beneficiary may do so, but the beneficiary is responsible for the TRICARE cost-shares.

* * * * *

(vi) *Effect of enrollment in Medicare Advantage Prescription Drug* (MA–PD) plan. In the case of a beneficiary enrolled in a MA–PD plan who receives items or services for which payment may be made under both the MA–PD plan and CHAMPUS/TRICARE, a claim for the beneficiary's normal out-of-

pocket costs under the MA–PD plan may be submitted for CHAMPUS/TRICARE payment. However, consistent with paragraph (c)(4) of this section, out-of-pocket costs do not include costs associated with unauthorized out-of-system care or care otherwise obtained under circumstances that result in a denial or limitation of coverage for care that would have been covered or fully covered had the beneficiary met applicable requirements and procedures. In such cases, the CHAMPUS/TRICARE amount payable is limited to the amount that would have been paid if the beneficiary had received care covered by the Medicare Advantage plan. If the TRICARE-Medicare beneficiary enrolls in a MA–PD drug plan, it will be governed by Medicare Part C, although plans that offer a prescription drug benefit also must comply with Medicare Part D rules. The beneficiary has to pay the plan's monthly premiums and obtain all medical care and prescription drugs through the Medicare Advantage plan before seeking CHAMPUS/TRICARE payment. CHAMPUS/TRICARE payment for such beneficiaries may not exceed that which would be payable for a beneficiary under paragraph (d)(1)(iii)(C) of this section.

3. Section 199.21 is amended by adding new paragraphs (g)(4) and (i)(2)(xi), and by revising paragraphs (h)(2)(ii) and (m), to read as follows:

§ 199.21 Pharmacy benefits program.

* * * * *

(g) * * *

(4) *Transition to the uniform formulary.* Beginning in Fiscal Year 2005, under an updated charter for the DoD P&T Committee, the committee shall meet at least quarterly to review therapeutic classes of pharmaceutical agents and make recommendations concerning which pharmaceutical agents should be on the Uniform Formulary, Basic Core Formulary, and Extended Core Formulary. The P&T Committee will review the classes in a methodical, but expeditious manner. During the transition period from the previous methodology of formulary management involving only the MTFs and the TRICARE Mail Order Pharmacy Program, previous decisions by the predecessor DoD P&T Committee concerning MTF and Mail Order Pharmacy Program formularies shall continue in effect. As therapeutic classes are reviewed under the new formulary management process, the processes established by this section shall apply.

* * * * *

(h) * * *

(2) * * *

(ii) *Availability of formulary pharmaceutical agents at military treatment facilities.* Pharmaceutical agents included on the uniform formulary are available through facilities of uniformed services, consistent with the scope of health care services offered in such facilities and additional determinations by the Pharmacy and Therapeutics Committee of the relative clinical effectiveness and cost effectiveness, based on costs to the Program associated with providing the agents to beneficiaries. The Basic Core Formulary (BCF) is a subset of the uniform formulary and is a mandatory component of formularies at all full-service MTF pharmacies. The BCF contains the minimum set of pharmaceutical agents that each full-service MTF pharmacy must have on its formulary to support the primary care scope of practice for Primary Care Manager enrollment sites. Limited-service MTF pharmacies (*e.g.*, specialty pharmacies within an MTF or pharmacies servicing only active duty military members) are not required to include the entire BCF on their formularies, but may limit their formularies to those BCF agents appropriate to the needs of the patients they serve. An Extended Core Formulary (ECF) may list preferred agents in drug classes other than those covered by the BCF. Among BCF and ECF agents, individual MTF formularies are determined by local Pharmacy and Therapeutics Committees based on the scope of health care services provided at the respective MTFs. All pharmaceutical agents on the local formulary of full-service MTF pharmacies must be available to all categories of beneficiaries.

* * * * *

(i) * * *

(2) * * *

(xi) For a Medicare-eligible beneficiary, the cost sharing requirements may not be in excess of the cost-sharing requirements applicable to all other beneficiaries covered by 10 U.S.C. 1086.

* * * * *

(m) *Effect of other health insurance.* The double coverage rules of section 199.8 of this part are applicable to services provided under the pharmacy benefits program. For this purpose, the Medicare prescription drug benefit under Medicare Part D, prescription drug benefits provided under Medicare Part D plans are double coverage plans and such plans will be the primary payer, to the extent described in section 199.8 of this part. Beneficiaries who elect to use these pharmacy benefits shall provide DoD with other health insurance information.

Dated: December 21, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E6–22258 Filed 12–27–06; 8:45 am]

BILLING CODE 5001–06–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–AZ–0009; FRL–8262–5]

Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve two revisions to the Arizona State Implementation Plan submitted by the Arizona Department of Environmental Quality. These revisions consist of changes to Arizona's Basic and Enhanced Vehicle Emissions Inspection Programs that would exempt collectible vehicles in the Phoenix metropolitan area, and collectible vehicles and motorcycles in the Tucson metropolitan area, from emissions testing requirements; an updated performance standard evaluation for the vehicle emissions inspection program in the Phoenix area; and new contingency measures. EPA is proposing approval of these two state implementation plan revisions because they meet all applicable requirements of the Clean Air Act and EPA's regulations and because the exemptions would not interfere with attainment or maintenance of the national ambient air quality standards in the two affected areas. EPA is proposing this action under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to exempt these vehicle categories from the emissions testing requirements of the State's vehicle emissions inspection programs as approved for the Phoenix and Tucson areas.

DATES: Written comments must be received at the address below on or before January 29, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–

OAR–2005–AZ–0009 by one of the following methods:

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

E-mail: *tax.wienke@epa.gov.*

Fax: (415) 947–3579 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

Mail: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901.

Hand Delivery: Wienke Tax, Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2005–AZ–0009. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Air Planning, Environmental Protection Agency (EPA), Region 9, Mailcode AIR–2, 75 Hawthorne Street, San Francisco, California 94105–3901. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622–1622, e-mail: *tax.wienke@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we'', ''us'', and ''our'' refer to EPA.

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I. Introduction and Background

In May 1995, EPA approved Arizona's Basic and Enhanced Vehicle Emissions Inspection/Maintenance (VEI) Programs as meeting the applicable requirements of the Clean Air Act, as amended in 1990 (CAA or ''Act'') and EPA's motor vehicle inspection and maintenance rule (''EPA's I/M rule'' or ''federal I/M rule'') as amended. See 60 FR 22518 (May 8, 1995). A ''basic'' I/M program was required in the Tucson Air Planning Area carbon monoxide (CO) nonattainment area (referred to by Arizona in this context as ''Area B'') and in the Phoenix metropolitan CO and ozone nonattainment area (referred to as ''Area A''). The VEI programs were designed to reduce emissions of CO, volatile organic compounds (VOC) and oxides of nitrogen (NO_X).[1] At that time, Arizona was not required to have an ''enhanced'' I/M program, although Arizona was implementing most elements of an enhanced program in Phoenix. Arizona's program, as implemented in Phoenix, however, was not approved as an enhanced program, because the program did not satisfy all the requirements in EPA's I/M rule for enhanced programs. An enhanced I/M program became a requirement for the Phoenix area when the area was reclassified from ''moderate'' nonattainment to ''serious'' nonattainment for the CO NAAQS effective August 28, 1996 (61 FR 39343, July 29, 1996), and when the area was reclassified from ''moderate'' nonattainment to ''serious'' nonattainment for the 1-hour ozone NAAQS effective February 13, 1998 (63 FR 7290, February 13, 1998).

Since the Arizona VEI programs were originally approved in May 1995, EPA has amended the federal I/M rule several times to provide states with more flexibility in designing their programs but also to require testing of the on-board diagnostic (OBD) system. Since that time, Arizona has also made a number of changes to its enhanced and basic VEI programs.

In January 2003, we approved changes to the Arizona VEI programs submitted to us on July 6, 2001 and April 10, 2002, including the incorporation of OBD testing, an exemption for the first five model year vehicles from the programs on a rolling basis, replacement of the previously-approved remote sensing program in Phoenix with an on-road testing study, and legislative changes to the waiver provisions. See 68 FR 2912 (January 22, 2003). In our January 2003 final rule, we also approved the VEI program in the Phoenix area as meeting the enhanced I/M program performance standard. In today's notice, we propose action on a statutory change made by the Arizona Legislature to the Arizona VEI programs to exempt certain categories of vehicles from emissions testing requirements.

[1] The Phoenix metropolitan area is also a nonattainment area for respirable particulate matter (PM_{10}); however, the VEI program plays a very minor role in the control strategy for this pollutant. There is no CAA requirement for I/M programs in PM_{10} nonattainment areas.

II. Summary of Arizona's SIP Submittals

The Arizona Department of Environmental Quality (ADEQ) submitted the most recent statutory changes to its Basic and Enhanced VEI Programs as a revision to the Arizona State Implementation Plan (SIP) on December 23, 2005 (''VEI SIP Revision''). The VEI SIP Revision submittal includes the SIP revision itself, divided into a non-regulatory portion, ''Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs'' (December 2005), and a regulatory portion, House Bill (HB) 2357, as well as supporting materials related to legal authority, adoption, public process and technical analysis.

HB 2357 amends the Arizona Revised Statutes (ARS) Section 49–542 by exempting vehicles that are at least 15 years old or are of a unique and rare design and that carry collectible vehicle insurance that restricts the mileage and/or use of the vehicle (''collectible vehicles'') from emissions testing in both Area A (i.e., the Phoenix area) and Area B (i.e., the Tucson area). In addition, HB 2357 exempts motorcycles in the Tucson area from emissions testing. Specifically, the amendments to ARS 49–542 are found in paragraphs or subparagraphs (J)(2)(k), (J)(2)(l), (Y), and (Z) of that section of code. The changes to ARS Section 49–542 are self-implementing, which means that they become effective upon EPA approval as a revision to the Arizona SIP.

Among the technical materials included in the VEI SIP Revision submittal package is a report [2] prepared by ADEQ that evaluates the impacts of exempting three vehicle categories (vehicles 25 model years old and older, motorcycles, and collectible vehicles) from the emissions testing requirements on ambient air quality and on the ability of Areas A and B (i.e., Phoenix and Tucson, respectively) to maintain or attain the national ambient air quality standards (NAAQS). The report concluded that the testing and repair of these vehicle categories as a whole does provide a significant air quality benefit. The analysis, however, also identified a subset of vehicle categories (collectible vehicles in Phoenix and Tucson plus motorcycles in Tucson) for which the emissions testing requirement does not provide a significant air quality benefit and for which exemption would not interfere with continued maintenance of the CO NAAQS or progress towards the 8-hour ozone NAAQS. HB 2357 was a Legislative response to the findings in this report.

In consultation with EPA concerning the VEI SIP Revision, ADEQ prepared an updated performance standard evaluation for the VEI program in the Phoenix area to reflect the new exemption for collectible vehicles, and developed new contingency measures that are intended to provide for reinstatement of emissions testing for the newly exempt vehicle categories in the event that a violation of the carbon monoxide NAAQS were to be recorded in the Phoenix or Tucson areas. On October 3, 2006, ADEQ adopted and submitted the updated performance standard evaluation and new contingency measures in a supplemental SIP revision, entitled, ''Supplement to Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs, December 2005'' (September 2006) (''VEI SIP Supplement''). As part of the submittal of the VEI SIP Supplement, ADEQ documented the public participation process that was conducted by ADEQ prior to adoption and submittal to EPA.

III. EPA Review of the SIP Revisions

A. CAA Procedural Provisions

CAA section 110(l) requires revisions to a SIP to be adopted by the state after reasonable notice and public hearing. EPA has promulgated specific requirements for SIP revisions in 40 CFR part 51, subpart F.

On October 20 and 21, 2005, ADEQ published notices in newspapers of general circulation in the Phoenix and Tucson areas of public hearings on proposed revisions to the Arizona SIP to exempt collectible vehicles in Phoenix and collectible vehicles and motorcycles in Tucson from emissions testing requirements under the Arizona VEI programs (i.e., a draft VEI SIP Revision). Public hearings were held on November 28, 2005 in Phoenix and November 30, 2005 in Tucson. On December 23, 2005, in accordance with Arizona law, ADEQ adopted these exemptions as set forth in ''Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs'' (December 2005) as a revision to the Arizona SIP and submitted the revision to EPA for approval.

ADEQ followed a similar process in adopting and submitting the VEI SIP Supplement. ADEQ held a public hearing in Tucson on August 30, 2006 and in Phoenix on August 31, 2006 on a draft VEI SIP Supplement and adopted the VEI SIP Supplement on October 3, 2006 in accordance with Arizona law prior to submittal to EPA as a revision to the Arizona SIP.

ADEQ's VEI SIP Revision and VEI SIP Supplement submittal packages include evidence of public notice and hearing, ADEQ responses to public comments, and ADEQ adoption as described above, and, based on review of these materials, we find that ADEQ has met the procedural requirements of CAA section 110(l) and 40 CFR part 51, subpart F.

B. I/M Program Requirements

As noted in Section I, Introduction and Background, herein, Arizona's VEI programs were most recently approved as meeting federal I/M program requirements on January 22, 2003 (68 FR 2912). Although the Phoenix and Tucson areas have been redesignated to ''attainment'' for the CO NAAQS, the VEI programs continue to be relied upon to maintain the CO standard in those areas. Moreover, ''enhanced'' I/M remains an ''applicable requirement'' for the Phoenix area under our final rule implementing the 8-hour ozone NAAQS (see 40 CFR 51.900(f) and 51.905(a)(1)) based on the designation of that area as a nonattainment area for the 8-hour ozone NAAQS (and designation as nonattainment for the 1-hour ozone NAAQS at the time of designation for the 8-hour standard). Thus, to be approved, the VEI programs, as amended and evaluated herein, must continue to meet the relevant enforceability requirements for I/M programs in subpart S of 40 CFR part 51 and, for the Phoenix area with respect to ozone, the enhanced performance standard in 40 CFR 51.351. In the following paragraphs, we review ADEQ's VEI SIP Revision and VEI SIP Supplement to determine whether the amended VEI programs continue to meet federal I/M program requirements. The aspects of I/M affected by the submitted revisions to the VEI programs include vehicle coverage and exemptions, compliance enforcement, and the performance standard evaluation.

1. Vehicle Coverage and Exemptions

The performance standard for enhanced I/M programs (including alternate low enhanced programs) assumes coverage of all 1968 and later model year light duty vehicles and trucks. Light duty trucks are not included in the performance standard for basic I/M programs. Other levels of coverage may be approved if the

[2] ''Report on Potential Exemptions from Vehicle Emissions Testing for Motorcycles, Collectible Vehicles, and Vehicles 25 Model Years Old and Older'' (December 2004).

necessary emission reductions are achieved. See 40 CFR 51.356.

The Arizona VEI programs approved by EPA in 1995 exempt several categories of vehicles from the emissions testing requirements. Such vehicle categories included, among others, vehicles manufactured in or before the 1966 model year and vehicles being sold between motor vehicle dealers. See 60 FR 22518, 22521 (May 8, 1995). In 2003, we approved revisions to the VEI programs including an exemption for the first five model year vehicles on a rolling basis. See 68 FR 2912 (January 22, 2003). The SIP revision we are acting on today would establish additional vehicle categories that would be exempt from emissions testing requirements: collectible vehicles in the Phoenix and Tucson areas and motorcycles in the Tucson area. Based on data for calendar year 2003, collectible vehicles make up 0.5 percent of the fleet of vehicles subject to VEI in the Phoenix area, and collectible vehicles and motorcycles together make up 2.1 percent of the subject fleet in the Tucson area. See Table 1 below.

TABLE 1.—PERCENTAGE OF FLEET AFFECTED BY SIP REVISION [1]

	Number of vehicles tested	Percent of vehicle fleet
Phoenix:		
Total Tested Fleet	825,812	100.0
Estimated Number of Collectible Vehicles	3,800	0.5
Tucson:		
Total Tested Fleet	373,734	100.0
Estimated Number of Collectible Vehicles	1,400	0.4
Number of Motorcycles	6,240	1.7

[1] From Table 1 on page 4 of the VEI SIP Revision.

Basic and enhanced I/M programs are not required to test motorcycles. However, the emissions testing of motorcycles was shown to have a significant air quality benefit in the Phoenix area, so the State has not adopted an exemption for motorcycles in that area. The effect of the new exemptions on the continued ability of the VEI program in the Phoenix area to meet the enhanced I/M program performance standard is discussed below in Section III.B.3, ''Performance Evaluation,'' and the effect of the new exemptions on emissions and ambient air quality in both Phoenix and Tucson is discussed herein in Section III.C, ''Demonstrating Noninterference With Attainment And Maintenance Under CAA Section 110(l).''

2. Compliance Enforcement

Section 51.361 of title 40 of the CFR requires that denial of motor vehicle registration be the method used to ensure compliance with enhanced I/M programs. ARS Section 49–542(D) and Arizona Administrative Code (AAC) R18–2–1007 require that all vehicles must complete a vehicle emissions inspection to obtain a vehicle registration.

Collectible vehicles exempt from emissions testing under the submitted SIP revision are required to have collectible vehicle insurance. This type of vehicle is ''maintained primarily for use in car club activities, exhibitions, parades or other functions of public interest or for a private collection and is used only infrequently for other purposes'' and ''has a collectible vehicle or classic automobile insurance coverage that restricts the collectible vehicle mileage or use, or both, and requires the owner to have another vehicle for personal use.'' [3]

The Arizona Department of Transportation, Motor Vehicle Division (MVD), will be able to track collectible vehicles in cooperation with collectible vehicle insurers. Insurers who submit evidence of collectible vehicle insurance to MVD will have those vehicles automatically tagged in MVD's database to be exempt from testing at renewal of registration. Should those vehicles' collectible insurance be cancelled or not be renewed, MVD will be notified by the insurer and will send the vehicle owner a letter that the collectible vehicle's registration will be cancelled. The owner of the vehicle has 14 days after receipt of the letter from MVD to submit a new policy. If this is not done, the vehicle's registration is cancelled, as is the exemption from emissions testing.

In contrast to collectible vehicles, exemption of motorcycles in the Tucson area from emissions testing would be straightforward from the standpoint of compliance enforcement and would not undermine compliance enforcement for other types of vehicles that continue to be subject to the emissions testing requirements under the VEI program in the Tucson area. Owners of motorcycles registered in the Tucson area will simply receive a registration or re-registration form from MVD that indicates ''emissions test not required.''

[3] See HB 2357, in Appendix A of the VEI SIP submittal.

Therefore, we propose to find that the Arizona VEI programs, as amended to exempt collectible vehicles in the Phoenix and Tucson areas and motorcycles in the Tucson area, continue to meet the compliance enforcement requirements of 40 CFR 51.361.

3. Performance Evaluation

In our review of ADEQ's VEI SIP Revision submittal, we concluded that the revision could not be approved without a performance evaluation demonstrating that the VEI program, as amended to exempt collectible vehicles, would continue to meet the federal enhanced I/M performance standard (codified at 40 CFR 51.351) in the Phoenix area. The need for an updated performance evaluation follows from the fact that the Phoenix area, which was designated as nonattainment for the 1-hour ozone NAAQS (at the time of designation for the 8-hour ozone nonattainment), is designated as nonattainment for the 8-hour ozone NAAQS and that enhanced I/M remains an ''applicable requirement'' for such areas under our final rule implementing the 8-hour ozone NAAQS (see 40 CFR 51.900(f) and 51.905(a)(1)).

In response, ADEQ prepared an updated performance evaluation using the most recent version of EPA's motor vehicle emissions model, MOBILE6.2. This updated evaluation was included in the VEI SIP Supplement submitted to EPA on October 3, 2006. The VEI SIP Supplement includes a summary report and paper copies of MOBILE6.2 input and output files.

For the updated evaluation, ADEQ developed and applied reduction factors to exclude collectible vehicles from the fleet tested under the VEI program as provided for in HB 2357. ADEQ then compared the emissions reduction benefits from the revised VEI program with the corresponding benefits that would be achieved under EPA's alternate low enhanced I/M performance standard.

The results of ADEQ's analysis are summarized in Table 2 below, which shows that the emissions reduction benefits achieved by the Arizona VEI program as amended are higher than those achieved under the performance standard. The amended Arizona VEI program continues to achieve greater emissions reductions than the federal model program because the VEI program includes elements that go beyond federal I/M requirements. These include a requirement for a one-time only waiver, an implementation area beyond the nonattainment area boundaries, and denial of waivers for grossly-emitting vehicles.

TABLE 2.—RESULTS OF ADEQ'S ALTERNATE LOW ENHANCED PERFORMANCE STANDARD MODELING [1]

	VOC	2008 NO_X	CO	VOC	NO_X	CO
I/M Benefits in Area A (grams/mile)	0.21	0.10	3.66	0.07	0.09	1.40
I/M Performance Standard benefits (grams/mile)	0.16	0.02	2.91	0.04	0.01	1.02

[1] The emission rates in this table represent the difference between the fleet-wide emission rate under the applicable program (*i.e.*, amended Arizona VEI program or EPA's I/M model program) and the corresponding emission rate under the no-I/M scenario. See Tables 1, 2, and 3 of appendix B to the VEI SIP Supplement.

Based on our review of the VEI SIP Supplement, we find ADEQ's methods used to update the performance standard evaluation and use of the alternate low enhanced I/M performance standard to be acceptable, and we find that the VEI program, as amended to exempt collectible vehicles in the Phoenix area from the emissions testing requirements, exceeds the alternate low enhanced I/M performance standard in the Phoenix area as required under 40 CFR 51.351 and 51.905(a)(1). Therefore, we propose to approve the updated performance standard evaluation for the Phoenix VEI program, as submitted on October 3, 2006 in the VEI SIP Supplement, as a revision to the Phoenix portion of the Arizona Ozone SIP.

C. Demonstrating Noninterference With Attainment and Maintenance Under CAA Section 110(l)

Revisions to SIP-approved control measures must meet the requirements of Clean Air Act section 110(l) to be approved by EPA. Section 110(l) states: ''* * *. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

We interpret section 110(l) to apply to all requirements of the CAA and to all areas of the country, whether attainment, nonattainment, unclassifiable, or maintenance for one or more of the six criteria pollutants. We also interpret section 110(l) to require a demonstration addressing all pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Thus, for example, modification of a SIP-approved measure may impact NO_X emissions, which may impact $PM_{2.5}$. The scope and rigor of an adequate section 110(l) demonstration of noninterference depends on the air quality status of the area, the potential impact of the revision on air quality, the pollutant(s) affected, and the nature of the applicable CAA requirements.

As described above, the changes to the Arizona VEI programs that would occur with EPA approval of the two SIP revision submittals evaluated herein (*i.e.*, the new exemptions from emissions testing for collectible vehicles in Phoenix and collectible vehicles and motorcycles in Tucson) affect both the Phoenix and Tucson areas. Therefore, EPA needs to review the effect of the exemptions in both of these areas before we can determine whether we can approve the two SIP revisions under CAA section 110(l).

The VEI SIP Revision submittal that seeks exemption of collectible vehicles from the Phoenix enhanced I/M program and collectible vehicles and motorcycles from the Tucson basic I/M program includes an evaluation of the effects of the revisions to the VEI programs on ozone, carbon monoxide, $PM_{2.5}$, and air toxics in both geographic areas. The details of ADEQ's evaluation of the emissions effects and related ambient air quality impacts of the new exemptions are contained in ''Report on Potential Exemptions from Vehicle Emissions Testing for Motorcycles, Collectible Vehicles and Vehicles 25 Model Years Old and Older (December 2004)'' (''2004 Report''), which was included as Appendix B to the VEI SIP Revision.

The 2004 report indicates that ADEQ used the latest version of EPA's motor vehicle emissions model program, MOBILE6.2, to estimate the emissions effects of the new exemptions. The methods used to gather data included surveys of collectible vehicle insurers and collectible vehicle and motorcycle owners, in addition to acquisition of data from the State vehicle emissions inspections programs, other state agencies, air quality planning agencies and relevant air quality plans. We find that ADEQ used reasonable methods and appropriate models in estimating the emissions effects of the new exemptions. Table 3 below summarizes ADEQ's estimates by geographic area, vehicle category, and pollutant in units of metric tons per day (mtpd). Table 3 also shows the emissions impact as a percentage of the overall pollutant-specific inventory in the applicable area.

TABLE 3.—VOC AND CO EMISSIONS INVENTORY IMPACTED BY THE VEI SIP REVISION

Vehicle category	Area-wide total emissions inventory (mtpd)	I/M benefit from test and repair of vehicles [1] (mtpd)	Percent of areawide total emissions inventory
Phoenix:			
Collectible Vehicles:			
VOC	328.9	0.03	0.009
CO	912.3	0.32	0.035
Tucson:			
Collectible Vehicles:			
VOC	84.8	0.01	0.012
CO	598.5	0.14	0.023
Motorcycles:			
VOC	84.8	0.03	0.035
CO	598.5	0.09	0.015

[1] I/M Benefit = the reduction in emissions due to the repair of vehicles that exceed the prescribed emissions standards in Arizona Administrative Code (A.A.C.) R18–2–1031.

1. Ozone

Ozone is formed by the interaction of directly-emitted precursor emissions, volatile organic compounds (VOC) and oxides of nitrogen (NO_X), in the presence of sunlight under the influence of meteorological and topographical features of an area.

Phoenix. By rule effective June 15, 2004, EPA designated the Phoenix area as a ''basic'' nonattainment area for the new 8-hour ozone NAAQS based on 2001–2003 air quality monitoring data. See 69 FR 23858 (April 30, 2004). As indicated in Table 3 above, the revision to the VEI program in Phoenix would increase VOC emissions by 0.03 metric tons per day, which represents approximately 0.009% of the overall VOC emissions inventory in this area under existing conditions. ADEQ did not estimate NO_X emissions, but we agree with ADEQ's reasoning that any change, positive or negative, in NO_X emissions would be minimal given the small number of vehicles involved, the fact that repairs to vehicles to reduce VOC and CO emissions often result in an incremental increase in NO_X emissions, and the small fraction of collectible vehicles (approximately 8 percent) currently subject to NO_X testing (only those that are model years 1981 and newer).

These incremental emissions impacts of the VEI SIP Revision would occur in an area for which overall VOC and NO_X emissions are expected to decline. Specifically, in the Phoenix area, overall VOC emissions are expected to decrease by 7% between 2006 and 2015 and overall NO_X emissions are expected to decrease by 13% over the same period.[4] Moreover, data collected by the ozone monitoring network in the Phoenix area appears to show that the area has attained the 8-hour ozone NAAQS for the years 2003–2005.[5]

Therefore, based on the minimal likely effect of the VEI SIP Revision on VOC and NO_X emissions, the downward trend in overall ozone precursor emissions, and monitoring data that appears to show that the area has attained the 8-hour ozone NAAQS, we find that exempting collectible vehicles from emissions testing under the VEI program would not interfere with attainment of the 8-hour ozone NAAQS in the Phoenix area.

Tucson. EPA included the Tucson area in ''rest of state,'' an area that we designated as ''unclassifiable/attainment'' for the new 8-hour ozone NAAQS. See 69 FR 23858 (April 30, 2004). As indicated in Table 3 above, the revision to the VEI program in Tucson would increase VOC emissions by 0.04 metric tons per day, which represents approximately 0.047% of the overall VOC emissions inventory in this area under existing conditions. For the reasons given above for the Phoenix area, we would expect any change, positive or negative, in NO_X emissions due to the VEI SIP Revision to be minimal.

These incremental changes in ozone precursor emissions would occur in an area where the highest three-year average of the annual fourth-highest daily maximum level (*i.e.*, the statistical basis for the NAAQS) collected among the nine stations comprising the ozone monitoring network in the Tucson area was approximately 10% below the 8-hour ozone NAAQS (based on 2003–2005 data).[6] As such, we agree with ADEQ's conclusion that the slight change in ozone precursor emissions from the exemption of collectible vehicles and motorcycles from emissions testing requirements of the VEI program would not interfere with continued attainment of the 8-hour ozone NAAQS in the Tucson area.

2. Carbon Monoxide

Carbon monoxide (CO) is a product of incomplete combustion of fuels. In most urban areas, most of the CO comes from motor vehicle exhaust.

Phoenix. In 2005, EPA redesignated the Phoenix area for CO, and approved a maintenance plan that provides for maintenance of the CO NAAQS in that area through 2015. See 70 FR 11553 (March 9, 2005) and 70 FR 52926 (September 6, 2005).

As indicated in Table 3 above, the revision to the VEI program in Phoenix would increase CO emissions by 0.32 metric tons per day, which represents approximately 0.035% of the overall CO emissions inventory in this area under existing conditions. The incremental CO emissions increase of the SIP revision would occur in an area where overall CO emissions are expected to remain relatively constant over the next 10 years and where ambient CO levels are well below the NAAQS. Specifically, in the Phoenix area, overall CO emissions are expected to decrease by only 1% between 2006 and 2015,[7] and the

[4] See Maricopa Association of Governments (MAG), ''One-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area,'' March 2004, pp. 3–11 and 3–12.

[5] See Table 4 in the VEI SIP Revision and see the Quick Look Reports (dated August 14, 2006 and August 31, 2006) included in the docket for this proposed rule.

[6] See Table 5 of the VEI SIP Revision and the Quick Look Reports (dated August 14, 2006 and August 31, 2006) included in the docket for this proposed rule.

[7] See Maricopa Association of Governments, ''Carbon Monoxide Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area,'' May 2003, pp. 3–10.

highest second-highest value (*i.e.*, the basis for the NAAQS) collected among the 15 stations comprising the CO monitoring network in the Phoenix area is 5.1 parts per million (ppm), eight-hour average, or less than 60% of the 8-hour CO NAAQS (based on 2004–2005 data).[8]

Therefore, based on the minimal estimated increase in CO emissions due to the VEI SIP Revision, the relatively constant level of overall CO emissions, and monitoring data that shows that ambient CO levels remain well below the CO NAAQS, we find that exempting collectible vehicles from emissions testing under the VEI program would not interfere with continued attainment of the CO NAAQS in the Phoenix area.

Tucson. Tucson was designated as a ''not classified'' CO nonattainment area following the CAA Amendments of 1990. See 56 FR 56694 (November 6, 1991). Arizona implemented its VEI program in the Tucson area as part of the control strategy to attain and maintain the CO NAAQS in the area. In 2000, EPA redesignated the Tucson area to attainment for CO and approved the area's maintenance plan, which provides for maintenance of the CO NAAQS through 2008. See 65 FR 36353 (June 8, 2000), 65 FR 50651 (August 21, 2000), and 69 FR 12802 (March 18, 2004).

As indicated in Table 3 above, the revision to the VEI program in Tucson would increase CO emissions by 0.23 metric tons per day, which represents approximately 0.038% of the overall CO emissions inventory in this area under existing conditions. The incremental CO emissions increase of the SIP revision would occur in an area where ambient CO levels are well below the NAAQS. Specifically, in the Tucson area the highest second-highest value (*i.e.*, the basis for the NAAQS) collected among the six stations comprising the CO monitoring network in the Tucson area is 2.5 ppm, eight-hour average, or less than 30% of the 8-hour CO NAAQS (based on 2004–2005 data).[9]

Therefore, based on the minimal estimated increase in CO emissions due to the VEI SIP Revision and monitoring data that shows that ambient CO levels remain well below the CO NAAQS, we find that exempting collectible vehicles and motorcycles from emissions testing under the VEI program would not interfere with continued attainment of the CO NAAQS in the Tucson area.

3. Particulate Matter

EPA has promulgated different NAAQS for particles with a nominal aerodynamic diameter of 10 microns or less (PM_{10}) and for particles with a nominal aerodynamic diameter of 2.5 micrometers (microns) or less ($PM_{2.5}$). Ambient PM_{10} and $PM_{2.5}$ levels consist of directly-emitted particles as well as secondary particles formed through atmospheric reactions involving such precursors as NO_X and SO_X.

Phoenix. In 1990, the Phoenix area was designated as a ''moderate'' nonattainment for the PM_{10} NAAQS by operation of law under the CAA Amendments of 1990. EPA reclassified the area as ''serious'' in 1996. See 61 FR 21372 (May 10, 1996). In 2002, EPA approved the ''serious area'' PM_{10} plan, which was intended to provide for attainment of the PM_{10} NAAQS in the Phoenix area by 2006. See 67 FR 48718 (July 25, 2002); certain plan elements re-approved at 71 FR 43979 (August 3, 2006).

The Phoenix area PM_{10} attainment plan relies largely on control of fugitive dust sources such as paved and unpaved roads, vacant disturbed lots, and unpaved parking lots. On-road vehicle exhaust accounts for approximately 2.1% of the annual average area-wide (directly-emitted) PM_{10} inventory.[10] The area continues to violate both the annual and 24-hour PM_{10} NAAQS and thus appears to have failed to meet the PM_{10} NAAQS by the 2006 attainment date.[11]

PM_{10} emissions are emitted as a product of incomplete combustion along with such other pollutants as CO and VOC, and because the exemption of collectible vehicles from emissions testing requirements of the VEI program in the Phoenix area would incrementally increase emissions of the latter pollutants, it would also likely result in the incremental increase of the former as well. ADEQ did not quantify the PM_{10} emissions impact of this new exemption. However, we can safely conclude that any such impact would be negligible, even though the area will likely miss its attainment deadline, given the small number of vehicles involved (see Table 1 herein), the magnitude of the emission impact of other products of incomplete combustion (see Table 3 herein and related discussion of ozone and CO above), and the small contribution of the applicable source category (on-road motor vehicle exhaust) to overall PM_{10} emissions in the Phoenix area. Thus, the VEI SIP Revision would not interfere with attainment of the PM_{10} NAAQS in the Phoenix area.

Based on the same rationale, we can also conclude that the exemption of collectible vehicles from the emissions testing requirements of the VEI program in the Phoenix area would not interfere with attainment of the NAAQS for $PM_{2.5}$, a pollutant for which the Phoenix area is designated as ''unclassifiable/attainment.'' See 70 FR 944 (January 5, 2005). Ambient $PM_{2.5}$ concentrations in the Phoenix area are well below the applicable NAAQS.

Tucson. EPA has included the Tucson area in the ''unclassifiable'' area designation for the PM_{10} NAAQS and in the county-specific ''unclassifiable/attainment'' designation (*i.e.*, Pima County) for the $PM_{2.5}$ NAAQS. See 57 FR 56762 (November 30, 1992), 70 FR 944 (January 5, 2005), and 40 CFR 81.303. Ambient PM_{10} and $PM_{2.5}$ concentrations in the Tucson area are well below the applicable NAAQS. For the reasons given above for Phoenix, the PM_{10} and $PM_{2.5}$ emissions impact of exemption of collectible vehicles and motorcycles from emissions testing requirements would be negligible and would not interfere with continued attainment of the PM_{10} and $PM_{2.5}$ NAAQS in the Tucson area.

4. Air Toxics

Phoenix and Tucson. Since the CAA does not have ambient air quality standards for air toxics, the EPA's interpretation of section 110(l) is that an area's compliance with any applicable MACT standards, as well as any Federal Motor Vehicle Control Programs (FMVCP) under sections 112 or 202(l) of the CAA constitutes an acceptable demonstration of noninterference for air toxics. Motor vehicles are not subject to MACT standards, and the VEI SIP Revision will not interfere with any Federal Motor Vehicle Control Programs that apply in the area. For these reasons, the State thus concludes, and EPA concurs, that the VEI SIP Revision would not interfere with any applicable CAA requirements relative to air toxics.

5. Conclusion

Based on the above discussion, EPA concludes that the changes to the Arizona VEI programs that would occur with EPA approval of the VEI SIP Revision and VEI SIP Supplement (*i.e.*, the exemptions from emissions testing for collectible vehicles in the Phoenix

[8] See Table 14 of the VEI SIP Revision and the Quick Look Reports (dated August 14, 2006 and August 31, 2006) included in the docket for this proposed rule.

[9] See Table 15 of the VEI SIP Revision and the Quick Look Reports (dated August 14, 2006 and August 31, 2006) included in the docket for this proposed rule.

[10] See Maricopa Association of Governments, ''Revised MAG 1999 Serious Area Particulate Plan for PM–10 for the Maricopa County Nonattainment Area,'' February 2000, pp. 8–15.

[11] We will make this determination when quality-assured data for 2006 are available.

area and collectible vehicles and motorcycles in the Tucson area) would not interfere with attainment or maintenance of any of the NAAQS in the Phoenix or Tucson areas and would not interfere with any other applicable requirement of the Act, and thus, are approvable under CAA section 110(l). Therefore, we propose to approve statutory exemptions from emissions testing for collectible vehicles in Phoenix and collectible vehicles and motorcycles in Tucson, as submitted on December 23, 2005 in the VEI SIP Revision, as a revision to the Phoenix and Tucson portions of the Arizona CO and Ozone SIPs.

D. Contingency Provisions of CAA Section 175A(d)

In 2000, EPA redesignated the Tucson area from nonattainment to attainment for the CO NAAQS and approved a maintenance plan. See 65 FR 36353 (June 8, 2000), 65 FR 50651 (August 21, 2000), and 69 FR 12802 (March 18, 2004). In 2005, EPA did the same for the Phoenix area. See 70 FR 11553 (March 9, 2005) and 70 FR 52926 (September 6, 2005). The CO maintenance plans for the two areas include contingency elements or plans that we approved as meeting the requirements of CAA section 175A(d).

For the Phoenix area, the contingency plan establishes an action (or trigger) level protective of the NAAQS and identifies several measures, including expansion of ''Area A'' (the area in which certain control measures apply), for early implementation as well as consideration of additional measures on a set schedule following the triggering event. For the Tucson area, the contingency plan establishes trigger or action levels as well as schedules for review and collection of data and consideration of adoption of control measures from a preselected list of such measures. At the time of redesignation of the Phoenix and Tucson areas to attainment for the CO NAAQS, the VEI programs were adopted and approved into the Arizona SIP and were assumed to continue in effect throughout the maintenance periods. Moreover, the VEI programs at the time of redesignation of these areas did not exempt collectible vehicles or motorcycles in either area from the emissions testing requirements.

Generally, contingency plans should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific time limit for action by the State and should also identify specific indicators, or triggers, which will be used to determine when the contingency measures need to be implemented. See EPA Memorandum from John Calcagni, Office of Air Quality Planning and Standards, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' dated September 4, 1992. At a minimum, CAA section 175A(d) requires that the State adopt as contingency measures all control measures that had been approved in the SIP for the area prior to redesignation but that the State subsequently repeals or relaxes. In this instance, because the EPA-approved VEI emissions testing requirements applied to collectible vehicles and motorcycles at the time of redesignation for the Phoenix and Tucson areas, reinstatement of emissions testing for these newly-exempt vehicle categories must be adopted as contingency measures for the Phoenix and Tucson CO maintenance areas to comply with CAA section 175A(d).

ADEQ's VEI SIP Supplement includes two new contingency measures that establish a binding commitment on ADEQ to request Legislative action to reinstate emissions testing for collectible vehicles in the Phoenix area or collectible vehicles and motorcycles in the Tucson area should the applicable area experience a violation of the CO NAAQS. See pages 1 and 2 of the VEI SIP Supplement. Specifically, ADEQ's contingency measures involve notification to the Legislature by the October following a violation of the CO NAAQS in the Phoenix or Tucson areas. After notifying the Legislature, ADEQ will request that the Arizona Legislature enact new legislation to reinstate the categories of vehicles exempted through EPA approval of the VEI SIP Revision and VEI SIP Supplement (*i.e.*, collectible vehicles in Phoenix or collectible vehicles and motorcycles in Tucson) during the General Legislative Session that begins in January. ADEQ's request to the Legislature will call for testing to be renewed for the newly exempt vehicle categories in the applicable area beginning the January following the General Legislative Session.

We view ADEQ's contingency measures in the context of the existing EPA-approved CO contingency plans for the Phoenix and Tucson areas, and as such, we find that the plans, as amended to include these new contingency measures, continue to meet the requirements of CAA section 175A(d), and that the new measures themselves are consistent with relevant EPA guidance. Therefore, we propose to approve the contingency measures, as adopted and submitted by ADEQ on October 3, 2006 in the VEI SIP Supplement, as a revision to the Phoenix and Tucson area portions of the Arizona CO SIP.

IV. EPA's Proposed Action and Request for Public Comment

Under section 110(k) of the CAA, EPA is proposing to approve the revisions to the Arizona SIP submitted by the State of Arizona on December 23, 2005 and October 3, 2006 concerning the Arizona VEI programs implemented in the Phoenix and Tucson areas because we find that the revisions are consistent with the requirements of the CAA and EPA's regulations.

Specifically, we are proposing to approve exemptions from emissions testing requirements for collectible vehicles in the Phoenix area and collectible vehicles and motorcycles in the Tucson area as set forth in the ''Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs'' (December 2005) and ARS Section 49–542 as amended in section 1 of Arizona House Bill 2357, 47th Legislature, 1st Regular Session (2005) and approved by the Governor on April 13, 2005; and the updated performance standard evaluation for the Phoenix area and new contingency measures as set forth in the ''Supplement to Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs, December 2005'' (September 2006).

We will accept comments from the public on this proposal for the next 30 days.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (*58 FR 51735*, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely proposes to approve changes to state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve changes to state law and does not impose any additional enforceable duty beyond that required

by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve changes to state law implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: December 12, 2006.

Jane Diamond,

Acting Regional Administrator, Region 9.

[FR Doc. E6–22305 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[EPA–HQ–OAR–2006–0363; FRL–8263–5]

RIN 2060–AN66

Amendment to Tier 2 Vehicle Emission Standards and Gasoline Sulfur Requirements: Partial Exemption for U.S. Pacific Island Territories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing to exempt the three U.S. Pacific Island Territories—American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (C.N.M.I.)—from the gasoline sulfur requirements that EPA promulgated in the Tier 2 motor vehicle rule. The Governor of American Samoa petitioned us for an exemption from the Tier 2 gasoline sulfur requirement because of the potential for gasoline shortages, the added cost, and the minimal air quality benefits the Tier 2 gasoline sulfur requirement would provide to American Samoa. Representatives of the Governors of Guam and C.N.M.I. have also requested an exemption referencing the petition submitted by American Samoa. The Far East market, primarily Singapore, supplies gasoline to the U.S. Pacific Island Territories. The Tier 2 sulfur standard effectively requires special gasoline shipments, which would increase the cost and could jeopardize the security of the gasoline supply to the Pacific Island Territories. The air quality in American Samoa, Guam, and C.N.M.I. is generally pristine, due to the wet climate, strong prevailing winds, and considerable distance from any pollution sources. We recognize that exempting the U.S. Pacific Island Territories from the gasoline sulfur standard will result in smaller emission reductions. However, Tier 2 vehicles using higher sulfur gasoline still emit 30% less hydrocarbons and 60% less NO_X than Tier 1 vehicles and negative effects on the catalytic converter due to the higher sulfur levels are, in many cases, reversible. Additionally, these reduced benefits are acceptable due to the pristine air quality, the fact that gasoline quality will not change, and the cost and difficulty of consistently acquiring Tier 2 compliant gasoline. The Tier 2 motor vehicle rule also sets standards for vehicle emissions. Vehicles in use on the U.S. Pacific Island Territories will not be exempt from the Tier 2 vehicle emission standards. However, additional flexibility will be afforded due to the lack of low sulfur gasoline.

DATES: Comments must be received on or before January 29, 2007. Request for a public hearing must be received by January 12, 2007. If we receive a request for a public hearing, we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0363, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA-HQ-OAR–2006–0363. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0363. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly

to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

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 *http://www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT: Sean Hillson, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mailcode AASMCG, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4789; fax number: (734) 214–4052; e-mail address: *Hillson.Sean@epa.gov*.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of today's **Federal Register**, we are making these revisions as a direct final rule without prior proposal because we view these revisions as noncontroversial and anticipate no adverse comment.

We have explained our reasons for these revisions in the preamble to the direct final rule. For further information, please see the information provided in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment on the rule, or on one or more distinct actions in the rule, we will withdraw the direct final rule, or the portions of the rule receiving adverse comment. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The contents of this preamble are listed in the following outline:

I. General Information
II. Summary of Rule
III. Statutory and Executive Order Reviews
IV. Statutory Provisions and Legal Authority

I. General Information

A. Does this Action Apply to Me?

This action will affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels for use in the U.S. Pacific Island Territories—American Samoa, Guam, and Commonwealth of the Northern Mariana Islands (C.N.M.I.). It will also affect you if you produce, import, distribute, or sell gasoline fuel for use in the U.S. Pacific Island Territories. The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR parts 80 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

Examples of potentially regulated entities	NAICS codes [a]	SIC codes [b]
Motor Vehicle Manufacturers	336111	3711
	336112	
	336120	
Alternative Fuel Vehicle Converters	336311	3592
	336312	3714
	422720	5172
	454312	5984
	811198	7549
	541514	8742
	541690	8931
Commercial Importers of Vehicles and Vehicle Components	811112	7533
	811198	7549
	541514	8742
Petroleum Refiners	324110	2911
Gasoline Marketers and Distributers	422710	5171
	422720	5172
Gasoline Carriers	484220	4212
	484230	4213

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC).

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit confidential business information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Summary of Rule

This proposed rule would exempt American Samoa, Guam and the Commonwealth of the Northern Mariana Islands (C.N.M.I.) from the gasoline sulfur requirements that EPA promulgated in the Tier 2 motor vehicle rule. The proposed rule would not exempt American Samoa, Guam, and C.N.M.I. from the Tier 2 vehicle emission standards. However, we are providing additional flexibilities for Tier 2 vehicles considering low sulfur gasoline is unavailable in the territories. These flexibilities (1) allow additional preconditioning prior to conducting exhaust emission tests (to remove sulfur deposits on the catalyst and emission control system components) and (2) allow special OBD system considerations to account for higher levels of sulfur present in gasoline. Exempting these U.S. Pacific Island Territories from the gasoline sulfur standard and providing flexibilities to the vehicle regulations for Tier 2 vehicles located in the U.S. Pacific Island Territories would have minimal, if any, impact on air quality.

For additional discussion of the proposed rule changes, see the direct final rule EPA has published in the ''Rules and Regulations'' section of today's **Federal Register**. This proposal incorporates by reference all the reasoning, explanation, and regulatory text from the direct final rule.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. This rule does not create new requirements. Its purpose is to relieve a burden imposed on the three Pacific Island Territories.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule would exempt the three U.S. Pacific Island Territories—American Samoa, Guam and the Commonwealth of the Northern Mariana Islands—from the Tier 2 rule for gasoline sulfur requirements and extend existing related flexibilities to the vehicle emission standards for the three territories. It does not create new requirements. Its purpose is to relieve a burden imposed on the three U.S. Pacific Island Territories. We have therefore concluded that today's rule will relieve regulatory burden for all affected small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives, and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. It does not create new requirements. Its purpose is to relieve a burden imposed on the three Pacific Island Territories.

E. Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the U.S. Pacific Island Territories in developing this rule. A summary of the concerns was raised during that consultation and EPA's response to those concerns is provided in previous sections of this preamble.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. This rule would exempt the three Pacific Island Territories—American Samoa, Guam and the Commonwealth of the Northern Mariana Islands (C.N.M.I.)—from the Tier 2 rule for gasoline sulfur requirements and extend existing related flexibilities to the vehicle emission standards for the three territories. It applies only to the three U.S. Pacific Island Territories. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

IV. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, sections 325, 211 and 202 of the Act, 42 U.S.C. 7521. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Gasoline, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: December 21, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–22309 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 71, No. 249

Thursday, December 28, 2006

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 21, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Rural Economic Development Loan and Grant Program.

OMB Control Number: 0570–0035.

Summary of Collection: The information collected is necessary to implement Section 313 of the Rural Electrification Act of 1936 (7 U.S.C. 940(c)) that established a loan and grant program. Rural Business Service (RBS) mission is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. Under this program, zero interest loans and grants are provided to electric and telecommunications utilities that have borrowed funds from RUS. The purpose of the program is to encourage these electric and telecommunications utilities to promote rural economic development and job creation projects such as business start-up costs, business expansion, community development, and business incubator projects.

Need and Use of the Information: RBS needs this collected information to select the projects it believes will provide the most long-term economic benefit to rural areas. The selection process is competitive and RBS has generally received more applications than it could fund. RBS also needs to make sure the funds are used for the intended purpose, and in the case of the loan, the funds will be repaid. RBS must determine that loans made from revolving loan funds established with grants are used for eligible purposes.

Description of Respondents: Not-for-profit Institutions; Business or other for-profit.

Number of Respondents: 120.

Frequency of Responses: Reporting: On Occasion, Annually.

Total Burden Hours: 4,725.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–22202 Filed 12–27–06; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket # AMS–FV–2006–0205; FV–06–317]

United States Standards for Grades of Cantaloups

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising official grade standards, is soliciting comments on the possible revisions to the United States Standards for Grades of Cantaloups. AMS has been reviewing the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. As a result, AMS has identified the United States Standards for Grades of Cantaloups for possible revisions.

AMS is considering revising the (Application of Tolerances(section in the U.S. standards. Additionally, the (Unclassified(category would be eliminated from the standards. AMS is seeking comments on these proposed changes that may better serve the industry.

DATES: Comments must be received by February 26, 2007.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail *FPB.DocketClerk@usda.gov*. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Cantaloups are available either at the above address or by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm.*

FOR FURTHER INFORMATION CONTACT: Cheri L. Emery, at the above address or call (202) 720–2185; e-mail *Cheri.Emery@usda.gov.*

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.(AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS 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 considering revisions to the voluntary United States Standards for Grades of Cantaloups using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised on June 30, 1968.

Background

AMS has been reviewing the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. AMS has identified the United States Standards for Grades of Cantaloups for possible revision. Prior to undertaking detailed work developing the proposed revisions in the standards, AMS is soliciting comments on the proposed revisions on the United States Standards for Grades of Cantaloups to better serve the industry.

AMS is considering revising the ''Application of Tolerances'' section in the U.S. standards by replacing the phrase ''The contents of individual packages * * * '' with ''Samples * * * '' and revising ''(a) A package may contain * * * '' to ''(a) Samples may contain * * * '' This change is needed in order to make the ''Application of Tolerances'' applicable to larger containers, such as bins, which may contain several hundred melons.

AMS is also eliminating the ''Unclassified'' category. AMS is removing this section in all standards as 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 due to current marketing practices.

This notice provides for a 60-day comment period for interested parties to comment on the proposed changes to the United States Standards for Grades of Cantaloups. Should AMS go forward with the revisions, it will develop the proposed revised standards that will be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: December 21, 2006

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–22235 Filed 12–27–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0172]

Interstate Movement of Garbage from Hawaii; Availability of a Pest Risk Assessment and an Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that a pest risk assessment and an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to a request to allow the interstate movement of garbage from Hawaii to a landfill in the State of Washington. The pest risk assessment evaluates the risks associated with the interstate movement of garbage from Hawaii to Washington. The environmental assessment examines the potential environmental effects associated with moving garbage interstate from Hawaii to Washington, subject to certain pest risk mitigation measures and documents our review and analysis of the environmental impacts associated with, and alternatives to, the action. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon Hamm, Assistant Deputy Administrator, Policy and Program Development, APHIS, 4700 River Road Unit 20, Riverdale, MD 20737–1231; (301) 734–4957.

SUPPLEMENTARY INFORMATION:

Background

The importation and interstate movement of garbage is regulated by the Animal and Plant Health Inspection Service (APHIS) under 7 CFR 330.400 and 9 CFR 94.5 (referred to below as the regulations) in order to protect against the introduction into and dissemination within the United States of plant and animal pests and diseases.

On November 8, 2006, we published in the **Federal Register** (71 FR 65454, Docket No. APHIS–2006–0172) a notice in which we announced the availability, for public review and comment of, a site-specific environmental assessment and a pest risk assessment relative to a request to allow the interstate movement of garbage from Hawaii to the State of Washington.

The environmental assessment, titled ''Movement of Plastic-baled Municipal Solid Waste from Honolulu, Hawaii to Roosevelt Regional Landfill, Washington'' (October 2006), examines the potential environmental effects associated with moving garbage interstate from Hawaii to the Roosevelt Regional Landfill in Klickitat County, WA, subject to certain pest risk mitigation measures. The environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, the proposed action.

The pest risk assessment, titled ''The Risk of Introduction of Pests to Washington State via Plastic-Baled Municipal Solid Waste from Hawaii'' (September 2006), evaluates the plant pest risks associated with the interstate movement of garbage from Hawaii to the Roosevelt Regional Landfill.

We solicited comments on the site-specific environmental assessment and the pest risk assessment for 30 days ending on December 8, 2006. We received five comments by that date, from three private citizens and two representatives of local municipalities. Of the comments, only one specifically addressed the substance of either assessment. That commenter noted that the environmental assessment incorrectly stated the capacity of the Roosevelt Regional Landfill. We have updated our environmental assessment to reflect the capacity reported by the commenter.

One commenter questioned if a copy of the pest risk assessment had been made available for the public to view. The pest risk assessment was made available to the public in several ways. Our November 2006 notice of availability contained specific instructions for obtaining both electronic and paper copies of the pest risk assessment.

One commenter disagreed with the idea of moving garbage from Hawaii to the mainland, asking how we can be sure the garbage does not harbor deadly

diseases or tiny animals. We believe that the pest risk assessment provides a thorough analysis of risks presented, and that those risks are fully addressed by the baling technology and other safeguards that will be required.

One commenter requested information on the companies that have expressed interest in sending municipal solid waste (MSW) from Hawaii to Roosevelt Regional Landfill. As noted on page 2 of the pest risk assessment, Pacific Rim Environmental Resources and Hawaii Waste Systems have proposed moving baled MSW from Hawaii to a landfill in Washington State. Another commenter asked who initiated the request for an environmental assessment and if these assessments are done routinely by APHIS. For this particular action, APHIS does routinely prepare environmental assessments. As explained in the ''Purpose and Need'' section of the environmental assessment, APHIS is reviewing two requests to move MSW from Honolulu, HI, to the State of Washington under compliance agreements. APHIS must complete an environmental assessment to evaluate the potential impact on the human environment prior to the issuance of these compliance agreements. The purpose of this review is to determine whether the transport of Hawaiian MSW under compliance agreements would result in a significant impact on the human environment.

One commenter asked what measures would be taken to ensure that unacceptable waste would be segregated from baled waste. APHIS recommends a series of mitigations in the pest risk assessment that would ensure that MSW is separated from prohibited materials and processed and shipped in a way that would prevent the introduction and dissemination of plant pests. Any companies interested in processing and shipping MSW from Hawaii to the mainland would have to enter into a compliance agreement with APHIS and the compliance agreement would spell out all required safeguards. If any company failed to observe the conditions of the compliance agreement, that company would no longer be permitted to process and ship MSW.

Finally, one commenter stated that APHIS should not approve the proposals to ship plastic-baled MSW from Hawaii to the State of Washington. The commenter stated that any decisions regarding the disposition of a community's MSW should be left to the local government. To clarify, the pest risk assessment and the environmental assessment were conducted in order to determine if the movement of MSW from Hawaii to the mainland of the United States would present any risk of introduction and dissemination of plant pests or animal diseases or if that action would have any negative impacts on the environments. APHIS is satisfied with the conclusions of those assessments. Additionally, APHIS will enter into compliance agreements with companies that wish to move MSW from Hawaii to the mainland United States to ensure that the mitigations and protocols described in our assessments are being followed. It is entirely up to the local jurisdiction as to whether or not the community will avail itself of this potential disposal option for its MSW.

The site-specific pest risk assessment and environmental assessment and finding of no significant impact may be viewed on the Regulations.gov Web site.[1] Copies of the pest risk assessment and environmental assessment and finding of no significant impact are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 21st day of December 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–22267 Filed 12–27–06; 8:45 am]

BILLING CODE 3410–34–P

[1] Go to *http://www.regulations.gov*, click on the ''Advanced Search'' tab and select ''Docket Search.'' In the Docket ID field, enter APHIS–2006–0172, click ''Submit,'' then click on the Docket ID link in the search results page. The pest risk assessment and the environmental assessment and finding of no significant impact will appear in the resulting list of documents.

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, ID, WY and UT, Caribou Oil and Gas Leasing EIS

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Caribou-Targhee National Forest gives notice of the intent to prepare an environmental impact statement (EIS) to document the analysis and disclose the anticipated environmental and human effects of oil and gas leasing on the Caribou administrative unit of the Forest and the Curlew National Grassland in southeast Idaho, with minor amounts of land in northern Utah and western Wyoming. The Federal Onshore Oil and Gas Leasing Reform Act of 1987 (FOOGLRA) requires the Forest Service to evaluate National Forest System (NFS) lands for potential oil and gas leasing. As the agency responsible for lease issuance and administration, the Bureau of Land Management (BLM) will participate as a cooperating agency.

DATES: Comments concerning the scope of the analysis should be received within 45 days from the date of this notice to be most helpful. The draft environmental impact statement is expected by November, 2007 and the comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The final environmental impact statement is expected in April, 2008.

ADDRESSES: Send written comments to Steve Robison, Oil and Gas Team Leader, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, ID 83401. Electronic comments can be submitted in rich text format (.rtf), or Word (.doc) to *comments-intermtn-caribou-targhee@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Lynn Ballard, Public Affairs Officer, Caribou-Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, ID 83401; phone (208) 557–5765. For technical information contact: Steve Robison, Oil and Gas Team Leader, (208) 557–5799.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

FOOGLRA requires the Forest Service to evaluate National Forest System (NFS) lands that are legally open to leasing for potential oil and gas leasing

and development, in accordance with the National Environmental Policy Act of 1969. FOOGLRA also establishes Forest Service consent authority for leasing prior to the BLM offering NFS lands for lease. Leasing on NFS lands is done under the authority of the Mineral Leasing Act of 1920 (MLA), as amended, and implementing regulations at 36 CFR 228, subpart E, and 43 CFR 3100. The MLA provides that all public lands are open to oil and gas leasing unless they have been closed by a specific land order. The Caribou administrative unit portion of the Caribou-Targhee NF and the Curlew National Grassland (herein referred to as ''the Caribou'') do not have Land and Resource Management Plan direction or decisions that determine which NFS lands are administratively available for oil/gas leasing or the conditions (stipulations) necessary to lease those specific lands. Since the FOOGLRA was signed into law, there has been little industry interest in oil and gas leasing on the Caribou, and no leases have been issued in the past 15 years. The BLM Idaho State Office has received Expressions of Interest for leasing portions of the Caribou for oil/gas.

The intent of the applicable laws and regulations (see summary) is to lease appropriate NFS lands and provide a reasonable opportunity to explore for, discover, and produce economic oil and gas reserves from available Federal lands, while meeting the requirements of environmental laws and protecting surface resources and interests not compatible with such activities.

Proposed Action

The Forest Service and BLM propose to conduct the analysis and decide which NFS lands on the Caribou will be made available for oil and gas leasing and under what terms and conditions (stipulations) these specific lands may be leased. As part of the analysis, the Forest Service will identify those areas that would be administratively available for leasing subject to the terms and conditions of the standard oil and gas lease form, and subject to constraints that would require the use of lease stipulations such as limiting surface use, timing restrictions, and/or prohibiting surface occupancy in accordance with the Caribou Land and Resource Management Plan (Caribou Plan, revised 2003) and the Curlew National Grassland Land and Resource Management Plan (Curlew Plan, 2002).

To comply with the 2001 Roadless Area Conservation Rule, no road construction or reconstruction would be allowed in Inventoried Roadless Areas (see attached Inventoried Roadless Area map for a delineation of the IRAs on the Caribou). Leasing will be considered in some Roadless areas with no surface occupancy stipulations. The analysis will also: (1) Identify alternatives to the proposed action; (2) project the type/amount of post-leasing activity that is reasonably foreseeable; and (3) analyze the reasonable foreseeable impacts of projected post-leasing activity [36 CFR 228.102(c)].

Possible Alternatives

All alternatives studied in detail must fall within the scope of the purpose and need for action and will generally tier to and comply with the Caribou and Curlew Plans. Law requires the evaluation of a ''no action alternative''. Under the No Action/No Lease alternative, no NFS lands on the Caribou would be made available for oil/gas leasing at this time.

The other identified preliminary alternative would allow leasing on some NFS lands consistent with the Caribou and Curlew Plans. This alternative would be similar to the proposed action but would consider road construction or reconstruction in some of the inventoried roadless areas in the event of a future change in inventoried roadless area direction. Other alternatives which would involve making some lands unavailable for leasing and other lands available for leasing with lease stipulations for the protection of surface resources and other interests may be developed based on public input.

Lead and Cooperating Agencies

The Forest Service is the Lead Agency. The Bureau of Land Management will participate as a Cooperating Agency.

Responsible Official

Larry Timchak, Forest Supervisor, Caribou -Targhee National Forest, 1405 Hollipark Drive, Idaho Falls, ID 83401.

Idaho State Director, Bureau of Land Management, 1387 South Vinnell Way, Boise, ID 83709.

Wyoming State Director, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003.

Utah State Director, Bureau of Land Management, P.O. Box 45155, Salt Lake City, UT 84101.

Nature of Decision To Be Made

The Forest Supervisor, Caribou-Targhee National Forest, will decide which lands on the Caribou will be administratively available for oil and gas leasing, along with the associated conditions or constraints for the protection of non-mineral resources and interests [36 CFR 228.102(d)]. The Forest Supervisor will also authorize the BLM to offer specific lands for lease, subject to Forest Service identified stipulations that will be attached to the lease [36 CFR 228.102(e)]. The Forest Supervisor will amend, if necessary, the Caribou and Curlew Land and Resource Management Plans.

The BLM is responsible for issuing and administering oil and gas leases under the Mineral Leasing Act of 1920, as amended, and Federal regulations at 43 CFR 3101.7. The BLM State Director (Idaho, Utah, and/or Wyoming) will decide whether or not to offer for lease specific lands, in their respective states, that have been authorized by the Caribou-Targhee Forest Supervisor for leasing with the Forest Service designated stipulations.

Scoping Process

The first formal opportunity to comment on the Caribou Oil and Gas Leasing analysis project is during the scoping process [40 CFR 1501.7] which begins with the issuance of this Notice of Intent.

Mail comments to: Steve Robison, Oil and Gas Team Leader, 1405 Hollipark Dr., Idaho Falls, ID 83401.

The Forest Service requests comments on the nature and scope of the environmental, social, and economic issues, and possible alternatives related to oil and gas leasing on the Caribou administrative unit of the Caribou-Targhee National Forest and the Curlew National Grassland.

A series of public meetings are scheduled to describe the proposal and to provide an opportunity for public input. Four scoping meetings are planned as follows:

January 16: 3 p.m. to 5 p.m., Tribal Business Center, Pima Dr., Fort Hall, ID.

January 16: 6 p.m. to 8 p.m., Westside Ranger District Office, 4350 Cliffs Dr., Pocatello, ID.

January 18: 5 p.m. to 7 p.m., Soda Springs Ranger District Office, 410 E. Hooper Ave., Soda Springs, ID.

January 18: 5 p.m. to 7 p.m., Montpelier Ranger District Office, 322 N. 4th, Montpelier, ID.

Written comments will be accepted at these meetings. The Forest Service will work with the Shoshone-Bannock Tribal government to address issues that could significantly or uniquely affect them.

The project will be listed in the Caribou-Targhee NF Quarterly Schedule of Proposed Actions and a scoping letter will be sent to local tribal interests, interested agencies, organizations, media-contacts and the Forest-wide mailing list.

Preliminary Issues

Important goals for the project are to meet the legal requirements for evaluating National Forest System (NFS) lands and make the required decisions. Preliminary issues are anticipated to involve potential effects to wildlife, biological diversity (Management Indicator Species), water, soil resources, social and economic settings, cultural and paleontological resources, inventoried roadless area characteristics, visual resources, traditional cultural properties (including plant and mineral gathering areas and sacred sites), forest transportation system, noxious weeds, and air quality. Specific issues will be developed through review of public comments and internal review.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Specific comments or concerns are the most important types of information needed for this EIS. Only public comments which address relevant issues and concerns will be considered and formally addressed in an appendix to the EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 20, 2006.

Lawrence A. Timchak,

Forest Supervisor.

[FR Doc. 06–9906 Filed 12–27–06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Forest Service

Kaibab National Forest; Arizona; Warm Fire Recovery Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This project would address part of the overall restoration needs for the approximately 40,000 acres that burned in June through July 2006 in the fire suppression area of the Warm Fire. Specifically, this proposal includes salvage of approximately 84.5 million board feet (MMBF) (168,987 hundred cubic feet) of fire killed timber on approximately 9,990 acres and reforestation through planting conifers on approximately 14,690 acres, while allowing approximately 4,050 acres to naturally reforest with quaking aspen.

DATES: Comments concerning the scope of the analysis must be received by January 26, 2007. The draft environment impact statement is expected May 2007 and the final environmental impact statement is expected September 2007.

ADDRESSES: Send written comments to District Ranger, North Kaibab Ranger District, Kaibab National Forest, P.O. Box 248, 430 S. Main Street, Fredonia, AZ 86022, or fax: 928–643–8105. Comments may be submitted by e-mail in word (.doc), rich text format (.rtf), text (.txt), or hypertext markup language (.html) to: *mailroom_r3_kaibab@fs.fed.us*, please include ''Warm Fire, Attn: Scott Clemans'' in the subject line. Oral comments may the provided to Interdisciplinary Team Leader Lois Pfeffer by telephone (559) 359–7023 or (307) 754–8197.

Please call her to set up a time for your oral comments. Comments may also be hand delivered weekdays 8 a.m. until 4:30 p.m. at the above address. To be eligible for appeal, each individual or representative from each organization submitting comments must either sign the comments or verify their identity upon request.

For further information, mail correspondence to Lois Pfeffer, Environmental Coordinator, TEAMS Planning, 145 East 2nd Street, Powell, WY 82435, (550) 359–7023 or Scott Clemans, Kaibab National Forest, North Kaibab Ranger District, P.O. Box 248, 430 S. Main Street, Fredonia, AZ 86022 (928) 643–8172.

FOR FURTHER INFORMATION CONTACT: Lois Pfeffer or Scott Clemans (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Introduction: The Warm Fire was started by lightning on June 8 and was managed as a ''wildland fire use'' fire for approximately 2½ weeks. On June 25, fire management transitioned from a wildland fire use to a suppression strategy after winds pushed the fire south outside the Maximum Manageable Area, burning over 39,000 acres. On July 1, 2006 a Burned Area Emergency Response (BAER) team wa assembled to conduct a soil and hydrologic assessment and initiate rehabilitation to minimize the loss of soil productivity, downstream water quality, and threats to human life and property. Rehabilitation of fire lines, repair of storm damaged roads, and aerial seeding of the high intensity burned areas occurred under the BAER plan. On August 1, 2006 an interdisciplinary post-fire assessment team was assembled to assess the status of the resources, identify recovery needs, and recommend a program of recovery work (beyond BAER). The assessment team identified the levels of tree mortality across the wildfire area. The final

assessment will be available on the Kaibab National Forest Web site *http://www.fs.fed.us/r3/kai*.

The National has begun addressing the needs identified in the draft assessment including repair of range improvements and removal of hazard trees along roads. The Warm Fire Recovery project addresses three of the needs identified in the assessment. Public meetings were held to discuss the Warm Fire and potential management of the burned areas. Comments and recommendations were considered in the formulation of the proposed action for this project.

Need for Action

Recovery the Economic Value from Burned Timber

Thousands of acres of suitable timberland burned in the Warm Fire are now occupied by dead and dying trees. The Kaibab Forest Plan includes the goal to ''manage suitable timberland to provide a sustained level of timber outputs to support local dependent industries''. The Plan also includes a guideline for Ecosystem Management Area (EMA) 13 to ''salvage stands, or parts thereof, that are severely damaged by dwarf mistletoes, insects, fires, windthrow''. The Forest Service has a MOU with the State of Utah to jointly identify priority restoration needs, build capacity to accomplish needed restoration projects and to expand the use of stewardship contracting or other tools that encourage local employment in order to benefit the management of the National Forests and communities of the Central Colorado Plateau.

There is a need to recover economic value of some of the burned timber before the commercial value of the wood is lost to deterioration. Jobs created from the sale of salvage material could provide positive benefits to the local community. Also, salvage harvest would help reduce the costs associated with meeting desired fuel conditions in portions of the burned area.

Reforest Burned Conifer Stands and Move Toward Longer-Term Desired Conditions

Long-term desired conditions based on reference conditions (Fule, et al., 2003a; Gildar and Fule, 2004; White and Vankat, 1993) and Kaibab Forest Plan Direction include:

- Forest stands dominated by the appropriate species, which includes both conifers and quaking aspen as determined as the site level.
- Uneven-aged stand conditions.
- Relatively low stand densities in ponderosa pine dominated stands, with higher densities in mixed conifer stands.
- Surface fuel levels are such that reflects the historic fire regime (relatively frequent and low to mixed fire intensity) and the associated ecological processes are maintained.
- Collectively, these conditions provide suitable habitat for nature wildlife species, including Northern Gashawks, Mexican Spotted Owls, and their prey species.

The Kaibab Forest Plan includes a standard for EMA 13 to ''formulate, design, and propose operations or improvements that contribute, over time, to the achievement of desired resource or ecological conditions in landscapes''.

Large areas of conifer stands were killed by the fire and now have few and poorly distributed seed sources. Natural conifer regenerations may take decades. There is a need to establish a course toward longer-term desired conditions by assuring regeneration of forest cover in the near term. There is a need to establish conifer seedlings in areas where conifer seed sources are now lacking. The early establishment of conifers (*e.g.* by planting seedlings) and management to reduce future large fuel hazards would provide the greatest assurance that conifers would be a significant components of the next generation of forest vegetation in the burned area. In order to protect the reforested stands from future wildland fires that would need to be managed to become resilient to low and moderate intensity fires. There is a need to protect and accelerate the recovery of habitat conditions that would provide for the needs of native wildlife.

Break Up Fuel Continuity in the Burned Area

There are currently thousands of acres of fire killed trees that will eventually fall to the ground, resulting in high loading of large fuels over extensive areas. Future fire intensity and severity is expected to be higher increasing the risk of soil damage due to large woody fuel accumulations.

The Kaibab Forest Plan provides fire protection guidelines for EMA 13 that include:

- Provide fire protection to restrict wildfire size to 20 acres.
- Minimize acreage burned by high intensity fires.

The Forest Plan also provides the following guideline for fuel management in EMA 13: ''Priority for fuel treatment investment is given to: a. Rural-urban interface; b. Areas which exceed the burning conditions which yield the historical, 50 percentile rate of fire spread in fuel model K; c. Maintenance of existing fuelbreaks and fuel reduction corridors.''

There is a need to reduce fuels in certain areas in order to increase the likelihood of safe and successful fire protection efforts in the future. These areas should have a strategic spatial arrangement and need to provide areas for relatively safe and effective management of future fires (both wildland and prescribed). The objective in these areas is to promote, over the longer term, fuel conditions with low surface fire intensity and fire severity, low resistance to fire line construction,; collectively helping to reduce the likelihood of future large, high intensity fires and protecting reforestation efforts.

Purpose and Need for Action

The purpose and need for the Warm Fire Recovery project is to:

- *Recover the economic value from burned timber.* There is a need to recover economic value of some of the burned timber before the commercial value of the wood is lost to deterioration. Jobs created from the sale of salvage material could provide positive benefits to the local community. Also, salvage harvest would help reduce the costs associated with meeting desired fuel conditions in portions of the burned area.
- *Reforest burned conifer stands and move toward longer-term desired conditions.* There is a need to establish a course toward longer-term desired conditions by assuring regeneration of forest cover in the near term. There is a need to establish confier seedlings in areas where conifer seed sources are now lacking. The early establishment of conifers (e.g. by planting seedings) and management to reduce future large fuel hazards would provide the greatest assurance that conifers would be a significant component of the next generation of forest vegetation in the burned area. In order to protect the reforested stands from future wildland fires they would need to be managed to become resilient to low and moderate inensity fires. There is a need to protect and accelerate the recovery of habitat conditions that would provide for the needs of native wildlife.
- *Break up fuel continuity in the burned area.* There is a need to reduce fuels in certain areas in order to increase the likelihood of safe and successful fire protection efforts in the future. These areas should have a strategic spatial arrangement and need to provide areas for relatively safe and effective management of future fires (both wildland and prescribed). The objective in these areas is to promote, over the

longer term, fuel conditions with low surface fire intensity and fire severity, low resistance to fire line construction,; collectively helping to educe the likelihood of future large, high intensity fires and protecting reforestation efforts.

Proposed Action

The proposed action is limited to the area within the Warm Wildfire area. Comments received from the public stakeholders were reviewed when determining where salvage logging may be appropriate. The following criteria were used to determine whether an area would be appropriate for treatment or not.

• *Wildlife:* Large blocks of snags and travel corridors for Mexican spotted owl and goshawk habitat would be reserved. These areas were combined with 100 foot buffers along drainages identified in the USGS National Hydrography Dataset stream layer. These areas would provide habitat with no ground disturbance within the project area.

• *Economics:* Stands considered for salvage include those with at least 3–4 MBF volume per acre in trees greater than 14 inches diameter. Smaller diameter material is anticipated to lose value quickly.

• *Soils:* Forest Plan direction allows harvest on slopes under 40 percent. Ground based equipment is on average limited to slopes less than 30 percent. Highly erosive soils that burned with high intensity were reviewed on the ground. To protect soils on steeper slopes, ground disturbing activities were limited to occur on slopes less than 20 percent and up to 100 feet into areas on slopes over 20 percent, but under 30 percent. The approximately breakdown in potential salvage logging by slope are: 8,230 acres percent of the salvage logging are on slopes between 20–30% slopes and approximately 250 acres of salvage logging on slopes over 30% adjacent to other salvage areas.

• *Fire severity:* Areas with moderate to high mortality were considered for salvage logging. Low severity burn areas with green trees were removed from salvge consideration.

• *Reforestation needs:* Areas with adequate aspen regeneration were identified for aspen restoration opportunities. Planting was identified for areas with high to moderate mortality that don't have an aspen response, are lacking a seed source and where suitble soil conditions exist to ensure a resonable change of reforestation success. Planting was also proposeed to ensure a reasonable chance of reforestation success. Planting was also proposed to encourage mixed conifer species composition for some of the areas that are designated Mexican spotted owl habitat.

The actions developed to address teh needs are as follows:

• Salvage logging on approximately 9,990 acres resulting in removal of approximately 84.5 MMBF of timber products.

• Salvage logging on approximately 9,990 acres resulting in removal of approximately 84.5 MMBF of timber products.

• Approximately 14,690 acres of reforestation need were identified in the wildfires aera. Reforestation proposed for the wildfire area includes allowing aspen to naturally regenerate on approximately 4,050 acres, planting on ponderosa pine on 5,370 acres, and planting of mixed conifers (ponderosa pine and Douglas fir) on 5,270 acres. In designated Mexican Spotted Owl habitat planting would occur to encourage mixed conifer habitat development.

• Slash disposal/fuels treatments would be conducted on some salvage logged areas to protect future regeneration and may include lop and scatter of tops and limbs, chipping, mastication, and/or hand pile or jackpot burning.

Responsible Official

Michael Williams, Forest Supervisor, Kaibab National Forest, 800 S. 6th Street, Williams AZ 86046.

Nature of Decision To Be Made

The decision to be made is whether to salvage fire-killed timber from the Warm Wildfire area as proposed or in what manner, the level of reforestation planting, and what mitigation measures would be in effect.

Scoping Process

Scoping letters will be sent to those that previously indicated interest in the War Fire. Comments received will; be reviewed and alternatives developed to address comments as needed.

Preliminary Issues

The following resource issues have been identified and will be addressed in the analysis:

• Direct, indirect, and cumulative soil and watershed effects in the burned area.

• Effects to wildlife (particularly MIS and TES species) and consistency with the intent of the Grand Canyon Game Preserve Act.

• Visual quality along the North Rim Scenic Byway.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments most helpful tot he project development are those which specifically identify issues caused or related to the proposed action. More information about this and other projects in the Warm Fire area is available on the Kaibab National Forest Web site at *http://www.fx.fed.us/r3/kai*.

Early Notice of Importance of Public Participation in Subsequent Environmental

Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the data the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the January 2007 scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments ont he draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the

National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 20, 2006.

Elizabeth M. Schuppert,

Acting Forest Supervisor.

[FR Doc. 06–9904 Filed 12–27–06; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tripod Fire Salvage Project, Okanogan and Wenatchee National Forests, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to recover the economic value through salvage harvest of dead and dying trees damaged in the Tripod Complex Fire, to remove potential hazard trees from open roads, and to reforest salvage harvest units within specified drainages of the Methow Valley and Tonasket Ranger Districts, Okanogan and Wenatchee National Forests. Details of the proposal are further described in the **SUPPLEMENTARY INFORMATION** section below. Approximately 2,800 acres would be treated in the proposed project area.

The analysis area encompasses a portion of the burned area in the Middle Fork Beaver Creek, Lightning Creek, Chewuch River, Ramsey Creek, Boulder Creek, North Fork Boulder Cree, Bromas Creek, Brevucinus Creek, Twentymile Creek, Pelican Creek, McCay Creek, Granite Creek, Cedar Creek, and Cabin Creek drainages, along Road 37 and Road 39 within the fire boundary, and includes parts of the following townships: T34N, R23E; T34N, R24E; T35N, R22E; T35N, R23E; T35N, R24E; T36N, R22E; T36N, R23E; T36N, R24E; T37N, R22E; T37N, R23E; T38N, R23E; and T39N, R23E; Williamette Meridian. The Tripod Complex Fire, located five miles northeast of Winthrop, Washington, burned approximately 175,000 acres across mixed ownership in July to September 2006. Approximately 164,000 acres were on National Forest System lands administered by the Methow Valley Ranger District and the Tonasket Ranger District, Okanogan and Wenatchee National Forests.

The purpose of the EIS will be to evaluate a range of reasonable alternatives for this proposal and take public comment on the analysis. The direction in the amended Okanogan National Forest Land and Resource Management Plan (Forest Plan) provides the overall guidance for management of National Forest System lands included in this proposal.

DATES: Comments concerning the scope of the analysis must be received by January 29, 2007. The draft DEIS is expected to be available to the public for review by March 2007. The final EIS is scheduled to be completed by June 2007.

ADDRESSES: Submit written comments to John Newcom, Methow Valley District Ranger, 24 West Chewuch Road, Winthrop, Washington 98862, Attn: Tripod Fire Salvage Project. Comments may be mailed electronically to *comments-pacificnorthwest-okanogan-methowvalley@fs.fed.us.* See the **SUPPLEMENTARY INFORMATION** section below for the format and other information about electronic filing of comments.

FOR FURTHER INFORMATION CONTACT: Bob Stoehr, Tripod Fire Salvage Project Leader, USDA Forest Service, Methow Valley Ranger District, 24 West Chewuch Road, Winthrop, Washington 98862; phone 509–996–4003.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need of the Tripod Fire Salvage Project includes: (1) Recovery of the economic value of a portion of dead and dying trees in the project areas; (2) Improving public safety within the fire area by removing potential hazard trees along open forest roads; and (3) Re-establishing trees in salvage harvest units where there are few or no green trees that can act as a seed source.

Proposed Action

The Forest Supervisor for the Okanogan and Wenatchee National Forests proposes to salvage dead and dying trees from approximately 2,800 acres within a portion of the area burned by the Tripod Complex Fire. Salvage harvest methods would include ground based and skyline yarding systems. Ground-based yarding systems would not be used on sustained slopes greater than 35 percent. To facilitate haul, 6.5 miles of existing classified roads would be reconstructed and about 3.5 miles of temporary roads would be constructed. No new classified road construction is proposed and all temporary roads would be closed or decommissioned after project activities are completed. No commercial harvest or road construction is proposed within the Granite Mountain, Long Swamp, and Tiffany Inventoried Roadless Areas. Roadside hazard trees and trees expected to become a hazard in the future within the project area along open roads and along any closed roads to be opened for implementation for this project, would be felled and removed to provide safe and adequate road access. Tree planting is proposed in salvage harvest units where there is insufficient seed source to ensure natural regeneration in a timely manner. The proposed action would require amendments of the Forest Plan to: (1) Allow harvest of green trees larger than 21′ diameter breast height that are expected to die from fire effects, (2) Allow snowplowing and motorized use of designated, groomed snowmobile routes to facilitate salvage operations, (3) Allow motorized access in Management Area 26, which is deer winter range, during the winter season to facilitate salvage operations, and (4) Exceed open road density standards in discrete management areas as a result of salvage operations.

Possible Alternatives

A full range of alternatives will be considered, including the proposed action, no action, and additional alternatives that respond to issues generated during the scoping process.

Responsible Official

The Responsible Official is James L. Boynton, Forest Supervisor, Okanogan and Wenatchee National Forests, 215 Melody Lane, Wenatchee, Washington 98801. The Responsible Official will document the Tripod Fire Salvage Project decision and reasons for the decision in a Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR Part 215).

Nature of the Decision To Be Made

The Forest Supervisor for the Okanogan and Wenatchee National Forests will decide whether or not to salvage timber, remove potential hazard trees, and reforest salvage harvest units, and if so, the locations and extent of treatments. The decision will include whether or not to reconstruct classified roads and construct new temporary roads for access within the project area, and if so, how much. The Forest Supervisor will also decide how to

mitigate effects of these actions and will determine when and how monitoring of effects will take place. In making his decision, the Forest Supervisor will consider how well each alternative meets the purpose and need, the manner in which each alternative responds to key issues raised and public comments received during the analysis, and the impacts of proposed project activities to National Forest System land and resources.

Scoping Process

Public participation will be sought at several points during the analysis, including listing of this project in the Winter 2006 and subsequent issues of the Okanogan and Wenatchee National Forests Schedule of Proposed Action; letters to Indian Tribes, agencies, organizations and individuals who may be intersted in or affected by the proposed activities; and a legal notice in *The Wenatchee World* newspaper. A public meeting will be scheduled in January 2007 to describe the proposed action and identify public issues. Other meetings will be scheduled as needed. The scoping process will also include identifying major issues to be analyzed in depth, exploring alternatives to the proposed actions, and identifying potential environmental effects of the proposed action and alternatives (*i.e.,* direct, indirect and cumulative effects).

Preliminary Issues

Preliminary issues identified include the potential effect of the proposed action on soils, water quality and fish habitat, snags and down wood, and threatened, endangered and sensitive terrestrial and plant species; disturbance to cultural resources; potential for noxious week expansion; potential loss of economic value of trees damaged by the wildfire; and the safety and use of the area by the public.

Comment Opportunity

This notice of intent initiates the scoping process which guides development of the EIS. The Forest Supervisor is seeking public and agency comment on the proposed action to determine if any additional issues arise. Additional issues may lead either to other alternatives, or additional mitigation measures and monitoring requirements. Comments and data may be submitted electronically by sending electronic mail (e-mail) to: *comments-pacificnorthwest-okanogan-methowvalley@fs.fed.us.* Include the project name in the e-mail subject line and submit comments either as part of the e-mail message or an attachment in one of the following three formats: Microsoft Word, rich text format (rtf) or Adobe Portable Document Format (pdf).

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft EIS will be prepared for comment. The comment period on the draft EIS will be 30 days fromt he date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 2007 and the final EIS is expected to be completed by June 2007.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulilngs related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Harris,* 490 F. Supp. 1334, 1338 (E.E. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this notice, including names and addresses of those who comment, will be consdiered part of the public record on this Proposed Action adn will be available for public inspection.

Dated: December 21, 2006.

Anita Spargur,

Human Resources Officer and Acting Forest Supervisor.

[FR Doc. 06–9905 Filed 12–27–06; 8:45 am]

BILLING CODE 3419–11–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled the President's Volunteer Service Award (PVSA) application, Parts A, B, C, D, and E to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Shannon Maynard at 202–606–6713. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;

• Propose ways to enhance the quality, utility, and clarity of the information to be collected; and

• Propose 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, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register**on September 8, 2006. This comment period ended November 20, 2006. No public comments were received from this notice.

Description: Currently, the Corporation is soliciting comments concerning the proposed renewal of its President's Volunteer Service Award (PVSA) application, Parts A, B, C, D, and E. These applications must be completed by any organization that is interested in presenting the President's Volunteer Service Award. The President's Volunteer Service Award was established in 2003 as a recognition program to honor Americans who have answered the President's call to service and have made a sustained commitment to giving back to their communities and country through volunteer service. The President's Volunteer Service Award (PVSA) is one initiative that grew out of the USA Freedom Corps office at the White House, and the President's Council on Service and Civic Participation. In the past three years of the program, more than 500,000 Americans have received this honor. The PVSA application is completed by any organization interested in honoring their volunteers with the President's Volunteer Service Award. The application may be completed electronically using an on-line form at *www.presidentialserviceawards.gov* or by printing off and submitting the form via mail.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: President's Volunteer Service Award Applications.

OMB Number: 3045–0086.

Agency Number: None.

Affected Public: Not-for-profit, and private sector organizations.

Total Respondents: 40,000.

Frequency: On occasion.

Average Time Per Response: 15 minutes.

Estimated Total Burden Hours: 10,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: December 19, 2006.

Nicola Goren,

Chief of Staff, Office of the CEO.

[FR Doc. E6–22263 Filed 12–27–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0177]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Department of Defense, Joint Service Committee on Military Justice (JSC).

ACTION: Notice of summary of public comment received regarding proposed amendments to the Manual for Courts-Martial, United States (2005 ed.).

SUMMARY: The JSC is forwarding final proposed amendments to the Manual for Courts-Martial, United States (2005 ed.) (MCM) to the Department of Defense. The proposed changes, resulting from the JSC's 2005 and 2006 annual reviews of the MCM, concern the rules of procedure applicable in trials by courts-martial and offenses that may be charged under the Uniform Code of Military Justice (UCMJ). The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, ''Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon'' May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

ADDRESSES: Comments and materials received from the public are available for inspection or copying at the Office of The Judge Advocate General of the Army, Criminal Law Division, 1777 N. Kent Street, 10th Floor, Rosslyn, Virginia 22209–2194 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Pete Yob, Executive Secretary, Joint Service Committee on Military Justice, 1777 N. Kent Street, Rosslyn, Virginia 22209–2194, (703) 588–6744, (703) 588–0144 fax.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2006 (71 FR 45780), the JSC published a notice of Proposed Amendments to the Manual for Courts-Martial and a Notice of Public Meeting to receive comment on this proposal. The public meeting was held on 18 September 2006. One individual provided oral comment at the public meeting. The JSC received three sets of written comments from one individual, and two documents containing written comments from an organization. One anonymous poster submitted a comment through the Federal Docket Management System (FDMS) (DoD–2006–OS–0177).

Purpose

The proposed changes concern the rules of procedure applicable in trials by courts-martial and offenses that can be charged under the UCMJ. More specifically, the proposed changes: Allow a military judge to sua sponte enter a finding of not guilty to an offense at any time prior to authentication of the record of trial, if prior to entering such finding the military judge holds an Article 39(a) session giving the parties an opportunity to be heard on the matter; require any sentence that must be approved by the President of the United States to be forwarded from the Service Secretary concerned through the Secretary of Defense; provide a definition of ''clergyman's assistant'' as used in the Military Rule of Evidence concerning communications to clergy; provide definitions of the terms ''child of either'' and ''temporary physical custody'' as used in the Military Rule of Evidence concerning the husband-wife privilege; amend Article 120 to incorporate some sex offenses currently charged under Article 134 of the UCMJ, change the elements of rape and add other sexual assault offenses, include all sex offenses against children, change the offense of carnal knowledge to aggravated sexual assault of a child, and change all Rules for Courts-Martial and Military Evidence to be consistent with the new Article 120 offense; and adds a new offense of child endangerment under Article 134;

Discussion of Comments and Changes

In response to request for public comment the JSC received oral comments from one individual and written comments from this same individual, one organization, and one anonymous person posting to FDMS. The JSC considered the public comments and is satisfied that the proposed amendments are appropriate to implement without modification. The JSC will forward the public comments and proposed amendments to the Department of Defense.

The oral and written comments provided by members of the public regarding the proposed changes follow:

a. Several comments included suggestions for changes to the MCM that were outside the scope of the proposed amendments. These proposals will be considered for inclusion in the 2007 JSC annual review. They do not affect the proposed amendment currently under consideration.

b. Raised a concern about the public having a meaningful ability to comment because there was no summary, no explanation as to the ''extent, substance, impact, or motivation,'' for the proposed changes, and because changed portions were not indicated in highlighting or in bold, when the text of the proposal stated they would be. Requested that the proposed changes be republished in the **Federal Register** with a summary and explanation and requested release of minutes from the internal JSC meetings where the JSC discussed these issues. In addition, objected to a 60 day time period from the date of publication for public comment and recommended that this period be at least 75 days.

In answer, the JSC has considered these comments and has determined that the rulemaking process is adequate, satisfies statutory requirements, and provides sufficient opportunity for public participation. The JSC has concluded that the public had a meaningful opportunity for comment. A supplemental notice in the **Federal Register** explained that changed portions were not highlighted in the initial publication, as intended, but the proposed changes as published were in the format that would be forwarded to the Department of Defense. The supplement noted that a copy of the proposal with highlighted portions was available to anyone upon request to the Executive Secretary of the JSC. An explanation as to the meaning and intent of this proposed change is more appropriate for Congressional action, as the basis for this change is statutory. Any detailed summary published could inadvertently fail to convey all the nuances of this complex change and could lead to confusion about the actual wording and effect of the proposed change. The JSC does not release minutes of its internal, deliberative meetings. The typical period for public comment in the **Federal Register** is 60 days and the DoD Directive regulating the JSC requires a 60 day publication period.

c. Observed that the new Article 120 would not contain any offenses that could charge any criminal conduct that cannot be charged under existing provisions of the UCMJ.

In answer, while the new Article 120 arguably does not criminalize any acts that could not have been charged prior to the change, there was a legislative decision to define more categories of offenses to be charged according to more specific facts involved in sex crimes.

d. Opposed making ''indecent exposure'' an offense under Article 120 without an element that would require the conduct charged to be service discrediting or without an element that would exclude situations in which situations where those witnessing the exposure were consenting adults or the situation in which the exposure occurred made it the norm.

In answer, indecent exposure has an element requiring that the exposure be done in an indecent manner. One factor in determining whether exposure is indecent is the time, manner and place in which a person exposes himself or herself. Commanders will have the discretion to consider all surrounding factors before deciding if conduct involving exposure is actionable and whether action is appropriate.

e. Expressed a desire that state statutes, state court decisions, and official guidance to prosecutors be consulted as these proposed amendments are implemented.

In answer, a variety of sources, including Federal and state material, were consulted as these provisions were drafted. These sources will continue to be consulted during implementation.

f. Recommended that forcible sodomy be abolished as an offense chargeable under Article 125 because it could now be charged under Article 120, and recommended that the consensual sodomy no longer be an offense under the code or that it be moved to Article 134 and require an element that it be service discrediting.

In answer, this is a matter subject to legislative action. Congress did not include these changes as part of its legislative action in FY 2006.

g. Requested that the affirmative defense for marriage applicable to certain offenses be narrowed or eliminated.

In answer, the affirmative defenses were contained in the legislation passed by Congress. The affirmative defense for marriage only applies to some of the offenses under Article 120. Most of these offenses involve conduct that would otherwise be deemed as consensual but for the fact that they involved children under the age of 16. A number of states allow marriage to children under the age of 16 under certain circumstances.

h. Requested that the definition of ''child'' in the new Child Endangerment offense include a ''child in utero,'' to permit an expectant mother to be charged under this offense if her behavior endangers her unborn child.

In answer, Congress recently passed legislation that became law creating a UCMJ offense for causing the death or injury of an unborn child. Within this offense, it expressly exempts the mother of the child in utero from prosecution. Therefore, expanding the definition of child in the new child endangerment offense for the purpose of criminalizing conduct by an expectant mother would appear to be contrary to established Congressional intent.

Proposed Amendments After Consideration of Public Comment Received

The proposed recommended amendments to the Manual for Courts-Martial to be forwarded through the DoD for action by Executive Order of the President of the United States are as follows:

Section 1. Part II of the Manual for Courts-Martial, United States, is amended as follows:

(a) RCM 916(b) is amended to read:

(b) Burden of proof.

(1) General rule. Except as listed below in paragraphs (2), (3), and (4), the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(2) Lack of mental responsibility. The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

(3) Mistake of fact as to age. In the defense of mistake of fact as to age as described in Part IV, para. 45a(o)(2) in a prosecution of a sexual offense with a child under Article 120, the accused has the burden of proving mistake of fact as to age by a preponderance of the evidence. After the defense meets its burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(4) Mistake of fact as to consent. In the defense of mistake of fact as to consent in Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact, the accused has the burden of proving mistake of fact as to consent by a preponderance of the evidence. After the defense meets its burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the defense did not exist.

(b) RCM 916(j)(2) is amended to read:

(2) Child Sexual Offenses. It is a defense to a prosecution for Article 120 (d), aggravated sexual assault of a child, Article 120(f), aggravated sexual abuse

of a child, Article 120(i), abusive sexual contact with a child, or Article 120 (j), indecent liberty with a child that, at the time of the offense, the child was at least 12 years of age, and the accused reasonably believed the person was at least 16 years of age. The accused must prove this defense by a preponderance of the evidence.

(c) RCM 916(j) is amended by inserting new paragraph RCM 916(j)(3) after the Discussion section to RCM 916(j)(2):

(j)(3) Sexual offenses. It is an affirmative defense to a prosecution for Article 120(a), rape, Article 120(c), aggravated sexual assault, Article 120(e), aggravated sexual contact, and Article 120(h), abusive sexual contact that the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable the ignorance or mistake must have been based on information, or lack of it, which would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which is a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

(d) RCM 920(e)(5)(D) is amended to read:

(D) The burden of proof to establish the guilt of the accused is upon the Government. [When the issue of lack of mental responsibility is raised, add: The burden of proving the defense of lack of mental responsibility by clear and convincing evidence is upon the accused. When the issue of mistake of fact under RCM 916 (j)(2) or (j)(3) is raised, add: The accused has the burden of proving the defense of mistake of fact as to consent or age by a preponderance of the evidence.]

(e) RCM 1004(c)(7)(B) is amended to read as follows:

(B) The murder was committed: while the accused was engaged in the commission or attempted commission of any robbery, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, aggravated arson, sodomy, burglary, kidnapping, mutiny, sedition, or privacy of an aircraft or vessel; or while the accused was engaged in the commission or attempted commission of any offense involving the wrongful distribution, manufacture, or introduction or possession, with intent to distribute, of a controlled substance; or, while the accused was engaged in flight or attempted flight after the commission or attempted commission of any such offense.

(f) RCM 1004(c)(8) is amended to read:

(8) That only in the case of a violation of Article 118(4), the accused was the actual perpetrator of the killing or was a principal whose participation in the burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson was major and who manifested a reckless indifference for human life.

(g) RCM 1102(b)(2), is amended to read:

(2) Article 39(a) sessions. An Article 39(a) session under this rule may be called, upon motion of either party or sua sponte by the military judge, for the purpose of inquiring into, and, when appropriate, resolving any matter which arises after trial and which substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may also call an Article 39(a) session, upon motion of either party or sua sponte, to reconsider any trial ruling that substantially affects the legal sufficiency of any findings of guilty or the sentence. The military judge may, sua sponte, at any time prior to authentication of the record of trial, enter a finding of not guilty of one or more offenses charged, or may enter a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the portion of the specification. Prior to entering such a finding or findings, the military judge shall give each party an opportunity to be heard on the matter in a post-trial Article 39(a) session.

(h) R.C.M. 1102(d) is amended by deleting the last phrase of the second sentence which reads:

''‚except that no proceeding in revision may be held when any part of the sentence has been ordered executed.''

(i) R.C.M. 1102(e)(2) is amended by inserting the following sentence after the last sentence in RCM 1102(e)(2):

''Prior to the military judge, sua sponte, entering a finding of not guilty of one or more offenses charged or entering a finding of not guilty of a part of a specification as long as a lesser offense charged is alleged in the portion of the specification, the military judge shall give each party an opportunity to be heard on the matter.''

(j) R.C.M. 1204(c)(2) is amended by inserting the following at the end of the sentence:

(c) Action of decision by the Court of Appeals for the Armed Forces.

(2) Sentence requiring approval of the President. If the Court of Appeals for the Armed Forces has affirmed a sentence which must be approved by the President before it may be executed, the Judge Advocate General shall transmit the record of trial, the decision of the Court of Criminal Appeals, the decision of the Court of Appeals for the Armed Forces, and the recommendation of the Judge Advocate General to the Secretary concerned, who, at his discretion, may provide a recommendation. All courts-martial transmitted by the Secretary concerned, other than the Secretary of the Department of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, for the action of the President shall be transmitted to the Secretary of Defense, who, at his discretion, may provide a recommendation.

Sec. 2. Part III of the Manual for Courts-Martial, United States, is amended as follows:

(a) MRE 412 is amended as follows:

Rule 412. Sex offense cases; Relevance of alleged victim's sexual behavior or sexual predisposition

(a) Evidence generally inadmissible. The following evidence is not admissible in any proceeding involving an alleged sexual offense except as provided in subdivisions (b) and (c):

(1) Evidence offered to prove that any alleged victim engaged in other sexual behavior.

(2) Evidence offered to prove any alleged victim's sexual predisposition.

(b) Exceptions.

(1) In a proceeding, the following evidence is admissible, if otherwise admissible under these rules:

(A) Evidence of specific instances of sexual behavior by the alleged victim offered to prove that a person other than the accused was the source of semen, injury, or other physical evidence;

(B) Evidence of specific instances of sexual behavior by the alleged victim with respect to the person accused of the sexual misconduct offered by the accused to prove consent or by the prosecution; and

(C) Evidence the exclusion of which would violate the constitutional rights of the accused.

(c) Procedure to determine admissibility.

(1) A party intending to offer evidence under subdivision (b) must—

(A) File a written motion at least 5 days prior to entry of pleas specifically describing the evidence and stating the purpose for which it is offered unless the military judge, for good cause shown, requires a different time for filing or permits filing during trial; and

(B) Serve the motion on the opposing party and the military judge and notify the alleged victim or, when appropriate, the alleged victim's guardian or representative.

(2) Before admitting evidence under this rule, the military judge must conduct a hearing, which shall be closed. At this hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. The alleged victim must be afforded a reasonable opportunity to attend and be heard. In a case before a court-martial composed of a military judge and members, the military judge shall conduct the hearing outside the presence of the members pursuant to Article 39(a). The motion, related papers, and the record of the hearing must be sealed and remain under seal unless the court orders otherwise.

(3) If the military judge determines on the basis of the hearing described in paragraph (2) of this subdivision that the evidence that the accused seeks to offer is relevant for a purpose under subdivision (b) and that the probative value of such evidence outweighs the danger of unfair prejudice to the alleged victim's privacy, such evidence shall be admissible under this rule to the extent an order made by the military judge specifies evidence that may be offered and areas with respect to which the alleged victim may be examined or cross-examined. Such evidence is still subject to challenge under MRE 403.

(d) For purposes of this rule, the term ''sexual offense'' includes any sexual misconduct punishable under the Uniform Code of Military Justice, federal law or state law. ''Sexual behavior'' includes any sexual behavior not encompassed by the alleged offense. The term ''sexual predisposition'' refers to an alleged victim's mode of dress, speech, or lifestyle that does not directly refer to sexual activities or thoughts but that may have a sexual connotation for the factfinder.

(a) M.R.E. 503(b) is amended by renumbering the existing subsection (2) to subsection (3) and inserting the following new subsection (2) after current M.R.E. 503(b)(1) to read as follows:

''(2) A ''clergyman's assistant'' is a person employed by or assigned to assist a clergyman in his capacity as a spiritual advisor.''

(b) M.R.E. 504 is amended by inserting new subsection (d) after M.R.E. 504(c):

''(d) Definitions. As used in this rule:

(1) The term ''a child of either'' includes not only a biological child, adopted child, or ward of one of the spouses but also includes a child who is under the permanent or temporary physical custody of one of the spouses, regardless of the existence of a legal parent-child relationship. For purposes of this rule only, a child is: (i) an individual under the age of eighteen; or (ii) an individual with a mental handicap who functions under the age of eighteen.''

(2) The term ''temporary physical custody'' includes instances where a parent entrusts his or her child with another. There is no minimum amount of time necessary to establish temporary physical custody nor must there be a written agreement. Rather, the focus is on the parent's agreement with another for assuming parental responsibility for the child. For example, temporary physical custody may include instances where a parent entrusts another with the care of their child for recurring care or during absences due to temporary duty or deployments.

Sec. 3. Part IV of the Manual for Courts-Martial, United States, is amended as follows:

(a) Paragraph 43, Article 118, Murder, paragraph (a)(4) is amended to read:

(a)(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery or aggravated arson; is guilty of murder, and shall suffer such punishment as a court martial may direct, except that if found guilty under clause (1) or (4), he shall suffer death or imprisonment for life as a court martial may direct.

(b) Paragraph 43, Article 118, Murder, paragraph (b)(4) is amended to read:

(b)(4) That, at the time of the killing, the accused was engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson.

(c) Paragraph 44, Article 119, Manslaughter, paragraph (b)(2)(d), is amended to read:

(b)(2)(d) That this act or omission of the accused constituted culpable negligence, or occurred while the accused was perpetrating or attempting to perpetrate an offense directly affecting the person other than burglary, sodomy, rape, rape of a child, aggravated sexual assault, aggravated sexual assault of a child, aggravated sexual contact, aggravated sexual abuse of a child, aggravated sexual contact with a child, robbery, or aggravated arson.

(d) Paragraph 45, Rape and Carnal Knowledge, is amended to read:

Article 120. Rape, Sexual Assault, and other Sexual Misconduct

a. Text. See Article 120, UCMJ.

(a) Rape. Any person subject to this chapter who causes another person of any age to engage in a sexual act by—

(1) Using force against that other person;

(2) Causing grievous bodily harm to any person;

(3) Threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping;

(4) Rendering another person unconscious; or

(5) Administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby substantially impairs the ability of that other person to appraise or control conduct;

is guilty of rape and shall be punished as a court-martial may direct.

(b) Rape of a child. Any person subject to this chapter who—

(1) Engages in a sexual act with a child who has not attained the age of 12 years; or

(2) Engages in a sexual act under the circumstances described in subsection (a) with a child who has attained the age of 12 years;

is guilty of rape of a child and shall be punished as a court-martial may direct.

(c) Aggravated sexual assault. Any person subject to this chapter who—

(1) Causes another person of any age to engage in a sexual act by—

(A) Threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping); or

(B) Causing bodily harm; or

(2) Engages in a sexual act with another person of any age if that other person is substantially incapacitated or substantially incapable of—

(A) Appraising the nature of the sexual act;

(B) Declining participation in the sexual act; or

(C) Communicating unwillingness to engage in the sexual act;

is guilty of aggravated sexual assault and shall be punished as a court-martial may direct.

(d) Aggravated sexual assault of a child. Any person subject to this chapter who engages in a sexual act with a child who has attained the age of 12 years is guilty of aggravated sexual assault of a child and shall be punished as a court-martial may direct.

(e) Aggravated sexual contact. Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (a) (rape) had the sexual contact been a sexual act, is guilty of aggravated sexual contact and shall be punished as a court-martial may direct.

(f) Aggravated sexual abuse of a child. Any person subject to this chapter who engages in a lewd act with a child is guilty of aggravated sexual abuse of a child and shall be punished as a court-martial may direct.

(g) Aggravated sexual contact with a child. Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (b) (rape of a child) had the sexual contact been a sexual act, is guilty of aggravated sexual contact with a child and shall be punished as a court-martial may direct.

(h) Abusive sexual contact. Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (c) (aggravated sexual assault) had the sexual contact been a sexual act, is guilty of abusive sexual contact and shall be punished as a court-martial may direct.

(i) Abusive sexual contact with a child. Any person subject to this chapter who engages in or causes sexual contact with or by another person, if to do so would violate subsection (d) (aggravated sexual assault of a child) had the sexual contact been a sexual act, is guilty of abusive sexual contact with a child and shall be punished as a court-martial may direct.

(j) Indecent liberty with a child. Any person subject to this chapter who engages in indecent liberty in the physical presence of a child—

(1) With the intent to arouse, appeal to, or gratify the sexual desire of any person; or

(2) With the intent to abuse, humiliate, or degrade any person;

is guilty of indecent liberty with a child and shall be punished as a court-martial may direct.

(k) Indecent act. Any person subject to this chapter who engages in indecent conduct is guilty of an indecent act and shall be punished as a court-martial may direct.

(l) Forcible pandering. Any person subject to this chapter who compels another person to engage in an act of prostitution with another person to be directed to said person is guilty of forcible pandering and shall be punished as a court-martial may direct.

(m) Wrongful sexual contact. Any person subject to this chapter who, without legal justification or lawful authorization, engages in sexual contact with another person without that other person's permission is guilty of wrongful sexual contact and shall be punished as a court-martial may direct.

(n) Indecent exposure. Any person subject to this chapter who intentionally exposes, in an indecent manner, in any place where the conduct involved may reasonably be expected to be viewed by people other than members of the actor's family or household, the genitalia, anus, buttocks, or female areola or nipple is guilty of indecent exposure and shall by punished as a court-martial may direct.

(o) Age of child.

(1) Twelve years. In a prosecution under subsection (b) (rape of a child), subsection (g) (aggravated sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 12 years. It is not an affirmative defense that the accused reasonably believed that the child had attained the age of 12 years.

(2) Sixteen years. In a prosecution under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), or subsection (j) (indecent liberty with a child), it need not be proven that the accused knew that the other person engaging in the sexual act, contact, or liberty had not attained the age of 16 years. Unlike in paragraph (1), however, it is an affirmative defense that the accused reasonably believed that the child had attained the age of 16 years.

(p) Proof of threat. In a prosecution under this section, in proving that the accused made a threat, it need not be proven that the accused actually intended to carry out the threat.

(q) Marriage.

(1) In general. In a prosecution under paragraph (2) of subsection (c) (aggravated sexual assault), or under subsection (d) (aggravated sexual assault of a child), subsection (f) (aggravated sexual abuse of a child), subsection (i) (abusive sexual contact with a child), subsection (j) (indecent liberty with a child), subsection (m) (wrongful sexual contact), or subsection (n) (indecent exposure), it is an affirmative defense that the accused and the other person when they engaged in the sexual act, sexual contact, or sexual conduct are married to each other.

(2) Definition. For purposes of this subsection, a marriage is a relationship, recognized by the laws of a competent State or foreign jurisdiction, between the accused and the other person as spouses. A marriage exists until it is dissolved in accordance with the laws of a competent State or foreign jurisdiction.

(3) Exception. Paragraph (1) shall not apply if the accused's intent at the time of the sexual conduct is to abuse, humiliate, or degrade any person.

(r) Consent and mistake of fact as to consent. Lack of permission is an element of the offense in subsection (m) (wrongful sexual contact). Consent and mistake of fact as to consent are not an issue, or an affirmative defense, in a prosecution under any other subsection, except they are an affirmative defense for the sexual conduct in issue in a prosecution under subsection (a) (rape), subsection (c) (aggravated sexual assault), subsection (e) (aggravated sexual contact), and subsection (h) (abusive sexual contact).

(s) Other affirmative defenses not precluded. The enumeration in this section of some affirmative defenses shall not be construed as excluding the existence of others.

(t) Definitions. In this section:

(1) Sexual act. The term 'sexual act' means—

(A) Contact between the penis and the vulva, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; or

(B) The penetration, however slight, of the genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.

(2) Sexual contact. The term 'sexual contact' means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of another person, or intentionally causing another person to touch, either directly or through the clothing, the genitalia, anus,

groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, or degrade any person or to arouse or gratify the sexual desire of any person.

(3) Grievous bodily harm. The term 'grievous bodily harm' means serious bodily injury. It includes fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries such as a black eye or a bloody nose. It is the same level of injury as in section 928 (article 128) of this chapter, and a lesser degree of injury than in section 2246(4) of title 18.

(4) Dangerous weapon or object. The term 'dangerous weapon or object' means—

(A) Any firearm, loaded or not, and whether operable or not;

(B) Any other weapon, device, instrument, material, or substance, whether animate or inanimate, that in the manner it is used, or is intended to be used, is known to be capable of producing death or grievous bodily harm; or

(C) Any object fashioned or utilized in such a manner as to lead the victim under the circumstances to reasonably believe it to be capable of producing death or grievous bodily harm.

(5) Force. The term 'force' means action to compel submission of another or to overcome or prevent another's resistance by—

(A) The use or display of a dangerous weapon or object;

(B) The suggestion of possession of a dangerous weapon or object that is used in a manner to cause another to believe it is a dangerous weapon or object; or

(C) Physical violence, strength, power, or restraint applied to another person, sufficient that the other person could not avoid or escape the sexual conduct.

(6) Threatening or placing that other person in fear. The term 'threatening or placing that other person in fear' under paragraph (3) of subsection (a) (rape), or under subsection (e) (aggravated sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another person being subjected to death, grievous bodily harm, or kidnapping.

(7) Threatening or placing that other person in fear.

(A) In general. The term 'threatening or placing that other person in fear' under paragraph (1)(A) of subsection (c) (aggravated sexual assault), or under subsection (h) (abusive sexual contact), means a communication or action that is of sufficient consequence to cause a reasonable fear that non-compliance will result in the victim or another being subjected to a lesser degree of harm than death, grievous bodily harm, or kidnapping.

(B) Inclusions. Such lesser degree of harm includes—

(i) Physical injury to another person or to another person's property; or

(ii) A threat—

(I) To accuse any person of a crime;

(II) To expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(III) Through the use or abuse of military position, rank, or authority, to affect or threaten to affect, either positively or negatively, the military career of some person.

(8) Bodily harm. The term 'bodily harm' means any offensive touching of another, however slight.

(9) Child. The term 'child' means any person who has not attained the age of 16 years.

(10) Lewd act. The term 'lewd act' means—

(A) The intentional touching, not through the clothing, of the genitalia of another person, with an intent to abuse, humiliate, or degrade any person, or to arouse or gratify the sexual desire of any person; or

(B) Intentionally causing another person to touch, not through the clothing, the genitalia of any person with an intent to abuse, humiliate or degrade any person, or to arouse or gratify the sexual desire of any person.

(11) Indecent liberty. The term 'indecent libert' means indecent conduct, but physical contact is not required. It includes one who with the requisite intent exposes one's genitalia, anus, buttocks, or female areola or nipple to a child. An indecent liberty may consist of communication of indecent language as long as the communication is made in the physical presence of the child. If words designed to excite sexual desire are spoken to a child, or a child is exposed to or involved in sexual conduct, it is an indecent liberty; the child's consent is not relevant.

(12) Indecent conduct. The term ''indecent conduct'' means that form of immorality relating to sexual impurity which is grossly vulgar, obscene, and repugnant to common propriety, and tends to excite sexual desire or deprave morals with respect to sexual relations. Indecent conduct includes observing, or making a videotape, photograph, motion picture, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material, without another person's consent, and contrary to that other person's reasonable expectation of privacy, of—

(A) That other person's genitalia, anus, or buttocks, or (if that other person is female) that person's areola or nipple; or

(B) That other person while that other person is engaged in a sexual act, sodomy (under section 925 (article 125)), or sexual contact.

(13) Act of prostitution. The term 'act of prostitution' means a sexual act, sexual contact, or lewd act for the purpose of receiving money or other compensation.

(14) Consent. The term 'consent' means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. A person cannot consent to sexual activity if—

(A) Under 16 years of age; or

(B) Substantially incapable of—

(i) Appraising the nature of the sexual conduct at issue due to—

(I) Mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise; or

(II) Mental disease or defect which renders the person unable to understand the nature of the sexual conduct at issue;

(ii) Physically declining participation in the sexual conduct at issue; or

(iii) Physically communicating unwillingness to engage in the sexual conduct at issue.

(15) Mistake of fact as to consent. The term 'mistake of fact as to consent' means the accused held, as a result of ignorance or mistake, an incorrect belief that the other person engaging in the sexual conduct consented. The ignorance or mistake must have existed in the mind of the accused and must have been reasonable under all the circumstances. To be reasonable the ignorance or mistake must have been based on information, or lack of it, which would indicate to a reasonable person that the other person consented. Additionally, the ignorance or mistake cannot be based on the negligent failure to discover the true facts. Negligence is the absence of due care. Due care is what a reasonably careful person would do under the same or similar

circumstances. The accused's state of intoxication, if any, at the time of the offense is not relevant to mistake of fact. A mistaken belief that the other person consented must be that which a reasonably careful, ordinary, prudent, sober adult would have had under the circumstances at the time of the offense.

(16) Affirmative defense. The term 'affirmative defense' means any special defense which, although not denying that the accused committed the objective acts constituting the offense charged, denies, wholly, or partially, criminal responsibility for those acts. The accused has the burden of proving the affirmative defense by a preponderance of evidence. After the defense meets this burden, the prosecution shall have the burden of proving beyond a reasonable doubt that the affirmative defense did not exist.''.

b. Elements.

(1) Rape.

(a) Rape by using force.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by using force against that other person.

(b) Rape by causing grievous bodily harm.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by causing grievous bodily harm to any person.

(c) Rape by using threats or placing in fear.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) Rape by rendering another unconscious.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by rendering that other person unconscious.

(e) Rape by administration of drug, intoxicant, or other similar substance.

(i) That the accused caused another person, who is of any age, to engage in a sexual act by administering to that other person a drug, intoxicant, or other similar substance;

(ii) That the accused administered the drug, intoxicant or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(iii) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(2) Rape of a child.

(a) Rape of a child who has not attained the age of 12 years.

(i) That the accused engaged in a sexual act with a child; and

(ii) That at the time of the sexual act the child had not attained the age of twelve years.

(b) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by using force against that child.

(c) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by causing grievous bodily harm to any person.

(d) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by threatening or placing that child in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) That the accused did so by rendering that child unconscious.

(f) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.

(i) That the accused engaged in a sexual act with a child;

(ii) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years; and

(iii) (a) That the accused did so by administering to that child a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child; and

(c) That, as a result, that child's ability to appraise or control conduct was substantially impaired.

(3) Aggravated sexual assault.

(a) Aggravated sexual assault by using threats or placing in fear.

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

(ii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to bodily harm or other harm (other than by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping).

(b) Aggravated sexual assault by causing bodily harm.

(i) That the accused caused another person, who is of any age, to engage in a sexual act; and

(ii) That the accused did so by causing bodily harm to another person.

(c) Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.

(i) That the accused engaged in a sexual act with another person, who is of any age; and

(Note: add one of the following elements)

(ii) That the other person was substantially incapacitated;

(iii) That the other person was substantially incapable of appraising the nature of the sexual act;

(iv) That the other person was substantially incapable of declining participation in the sexual act; or

(v) That the other person was substantially incapable of communicating unwillingness to engage in the sexual act.

(4) Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.

(a) That the accused engaged in a sexual act with a child; and

(b) That at the time of the sexual act the child had attained the age of 12 years but had not attained the age of 16 years.

(5) Aggravated sexual contact.

(a) Aggravated sexual contact by using force.

(i) That the accused engaged in sexual contact with another person; or

(ii) That the accused caused sexual contact with or by another person; and

(iii) That the accused did so by using force against that other person.

(b) Aggravated sexual contact by causing grievous bodily harm.

(i) That the accused engaged in sexual contact with another person; or

(ii) That the accused caused sexual contact with or by another person; and

(iii) That the accused did so by causing grievous bodily harm to any person.

(c) Aggravated sexual contact by using threats or placing in fear.

(i) That the accused engaged in sexual contact with another person; or

(ii) That the accused caused sexual contact with or by another person; and

(iii) That the accused did so by threatening or placing that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(d) Aggravated sexual contact by rendering another unconscious.

(i) That the accused engaged in sexual contact with another person; or

(ii) That the accused caused sexual contact with or by another person; and

(iii) That the accused did so by rendering that other person unconscious.

(e) Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.

(i) That the accused engaged in sexual contact with another person; or

(ii) That the accused caused sexual contact with or by another person; and

(iii)(a) That the accused did so by administering to that other person a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that other person; and

(c) That, as a result, that other person's ability to appraise or control conduct was substantially impaired.

(6) Aggravated sexual abuse of a child.

(a) That the accused engaged in a lewd act; and

(b) That the act was committed with a child who has not attained the age of 16 years.

(7) Aggravated Sexual Contact with a Child.

(a) Aggravated sexual contact with a child who has not attained the age of 12 years.

(i) That the accused engaged in sexual contact with a child; or

(ii) That the accused caused sexual contact with or by a child or by another person with a child; and

(iii) That at the time of the sexual contact the child had not attained the age of twelve years.

(b) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.

(i) That the accused engaged in sexual contact with a child; or

(ii) That the accused caused sexual contact with or by a child or by another person with a child; and

(iii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iv) That the accused did so by using force against that child.

(c) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.

(i) That the accused engaged in sexual contact with a child; or

(ii) That the accused caused sexual contact with or by a child or by another person with a child; and

(iii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iv) That the accused did so by causing grievous bodily harm to any person.

(d) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.

(i) That the accused engaged in sexual contact with a child; or

(ii) That the accused caused sexual contact with or by a child or by another person with a child; and

(iii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iv) That the accused did so by threatening or placing that child or that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.

(e) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering another or that child unconscious.

(i) That the accused engaged in sexual contact with a child; or

(ii) That the accused caused sexual contact with or by a child or by another person with a child; and

(iii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iv) That the accused did so by rendering that child or that other person unconscious.

(f) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.

(i) That the accused engaged in sexual contact with a child; or

(ii) That the accused caused sexual contact with or by a child or by another person with a child; and

(iii) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years; and

(iv) (a) That the accused did so by administering to that child or that other person a drug, intoxicant, or other similar substance;

(b) That the accused administered the drug, intoxicant, or other similar substance by force or threat of force or without the knowledge or permission of that child or that other person; and

(c) That, as a result, that child's or that other person's ability to appraise or control conduct was substantially impaired.

(8) Abusive sexual contact.

(a) Abusive sexual contact by using threats or placing in fear.

(i) That the accused engaged in sexual contact with another person; or

(ii) That the accused caused sexual contact with or by another person; and

(iii) That the accused did so by threatening or placing that other person in fear that any person would be subjected to bodily harm or other harm (other than by threatening or placing that other person in fear that any person would be subjected to death, grievous bodily harm, or kidnapping).

(b) Abusive sexual contact by causing bodily harm.

(i) That the accused engaged in sexual contact with another person; or

(ii) That the accused caused sexual contact with or by another person; and

(iii) That the accused did so by causing bodily harm to another person.

(c) Abusive sexual contact upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.

(i) That the accused engaged in sexual contact with another person; or

(ii) That the accused caused sexual contact with or by another person; and

(Note: add one of the following elements)

(iii) That the other person was substantially incapacitated;

(iv) That the other person was substantially incapable of appraising the nature of the sexual contact;

(v) That the other person was substantially incapable of declining participation in the sexual contact; or

(vi) That the other person was substantially incapable of communicating unwillingness to engage in the sexual contact.

(9) Abusive sexual contact with a child.

(a) That the accused engaged in sexual contact with a child; or

(b) That the accused caused sexual contact with or by a child or by another person with a child; and

(c) That at the time of the sexual contact the child had attained the age of 12 years but had not attained the age of 16 years.

(10) Indecent liberty with a child.

(a) That the accused committed a certain act or communication;

(b) That the act or communication was indecent;

(c) That the accused committed the act or communication in the physical presence of a certain child;

(d) That the child was under 16 years of age; and

(e) That the accused committed the act or communication with the intent to:

(i) arouse, appeal to, or gratify the sexual desires of any person; or

(ii) abuse, humiliate, or degrade any person.

(11) Indecent act.

(a) That the accused engaged in certain conduct; and

(b) That the conduct was indecent conduct.

(12) Forcible pandering.

(a) That the accused compelled a certain person to engage in an act of prostitution; and

(b) That the accused directed another person to said person, who then engaged in an act of prostitution.

(13) Wrongful sexual contact.

(a) That the accused had sexual contact with another person;

(b) That the accused did so without that other person's permission; and

(c) That the accused had no legal justification or lawful authorization for that sexual contact.

(14) Indecent exposure.

(a) That the accused exposed his or her genitalia, anus, buttocks, or female areola or nipple;

(b) That the accused's exposure was in an indecent manner;

(c) That the exposure occurred in a place where the conduct involved could reasonably be expected to be viewed by people other than the accused's family or household; and

(d) That the exposure was intentional.

c. Explanation.

(1) Definitions. The terms are defined in ¶ 45a(t), supra.

(2) Character of victim. See Military Rule of Evidence 412 concerning rules of evidence relating to the character of the victim of an alleged sexual offense.

(3) Indecent. In conduct cases, ''Indecent'' generally signifies that form of immorality relating to sexual impurity which is not only grossly vulgar, obscene, and repugnant to common propriety, but also tends to excite lust and deprave the morals with respect to sexual relations. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards.

d. Lesser included offenses. The following lesser included offenses are based on internal cross-references provided in the statutory text of Article 120. See subsection (e) for or a further listing of possible LIOs.

(1) Rape.

(a) Article 120—aggravated sexual contact

(b) Article 134—assault with intent to commit rape

(c) Article 128—aggravated assault, assault, assault consummated by a battery

(d) Article 80—attempts

(2) Rape of a Child.

(a) Article 120—aggravated sexual contact with a child; indecent act

(b) Article 134—assault with intent to commit rape

(c) Article 128—aggravated assault; assault; assault consummated by a battery; assault consummated by a battery upon a child under 16

(d) Article 80—attempts

(3) Aggravated Sexual Assault.

(a) Article 120—abusive sexual contact

(b) Article 128—aggravated assault, assault, assault consummated by a battery

(c) Article 80—attempts

(4) Aggravated Sexual Assault of a Child.

(a) Article 120—abusive sexual contact with a child; indecent act

(b) Article 128—aggravated assault; assault; assault consummated by a battery; assault consummated by a battery upon a child under 16

(c) Article 80—attempts

(5) Aggravated Sexual Contact.

(a) Article 128—aggravated assault; assault; assault consummated by a battery

(b) Article 80—attempts

(6) Aggravated Sexual Abuse of a Child.

(a) Article 120—indecent act

(b) Article 128—assault; assault consummated by a battery; assault consummated by a battery upon a child under 16

(c) Article 80—attempts

(7) Aggravated Sexual Contact with a Child.

(a) Article 120—indecent act

(b) Article 128—assault; assault consummated by a battery; assault consummated by a battery upon a child under 16

(c) Article 80—attempts

(8) Abusive Sexual Contact.

(a) Article 128—assault; assault consummated by a battery

(b) Article 80—attempts

(9) Abusive Sexual Contact with a Child.

(a) Article 120—indecent act

(b) Article 128—assault; assault consummated by a battery; assault consummated by a battery upon a child under 16

(c) Article 80—attempts

(10) Indecent Liberty with a Child.

(a) Article 120—indecent act

(b) Article 80—attempts

(11) Indecent Act. Article 80 attempts

(12) Forcible Pandering. Article 80 attempts

(13) Wrongful Sexual Contact. Article 80 attempts

(14) Indecent Exposure. Article 80 attempts

e. Additional Lesser Included Offenses. Depending on the factual circumstances in each case, to include the type of act and level of force involved, the following offenses may be considered lesser included in addition to those offenses listed in subsection d. (See subsection (d) for a listing of the offenses that are specifically cross-referenced within the statutory text of Article 120.) The elements of the proposed lesser included offense should be compared with the elements of the greater offense to determine if the elements of the lesser offense are derivative of the greater offense and vice versa. See Appendix 23 for further explanation of lesser included offenses.

(1)(a) Rape by using force. Article 120—indecent act; wrongful sexual contact

(1)(b) Rape by causing grievous bodily harm. Article 120 aggravated sexual assault by causing bodily harm; abusive sexual contact by causing bodily harm; indecent act; wrongful sexual contact

(1)(c) Rape by using threats or placing in fear. Article 120 aggravated sexual assault by using threats or placing in fear; abusive sexual contact by using threats or placing in fear; indecent act; wrongful sexual contact

(1)(d) Rape by rendering another unconscious. Article 120 aggravated sexual assault upon a person substantially incapacitated; abusive sexual contact upon a person substantially incapacitated; indecent act; wrongful sexual contact.

(1)(e) Rape by administration of drug, intoxicant, or other similar substance. Article 120 aggravated sexual assault upon a person substantially incapacitated; abusive sexual contact upon a person substantially incapacitated; indecent act; wrongful sexual contact.

(2)(a)–(f) Rape of a Child who has not attained 12 years; Rape of a child who has attained the age of 12 years but has

not attained the age of 16 years. Article 120—aggravated sexual assault of a child; aggravated sexual abuse of a child; abusive sexual contact with a child; indecent liberty with a child; wrongful sexual contact

(3) Aggravated Sexual Assault. Article 120—wrongful sexual contact; indecent act

(4) Aggravated Sexual Assault of a Child. Article 120—aggravated sexual abuse of a child; indecent liberty with a child; wrongful sexual contact

(5)(a) Aggravated Sexual Contact by force. Article 120—indecent act; wrongful sexual contact

(5)(b) Aggravated Sexual Contact by causing grievous bodily harm. Article 120—abusive sexual contact by causing bodily harm; indecent act; wrongful sexual contact

(5)(c) Aggravated Sexual Contact by using threats or placing in fear. Article 120—abusive sexual contact by using threats or placing in fear; indecent act; wrongful sexual contact

(5)(d) Aggravated Sexual Contact by rendering another unconscious. Article 120 abusive sexual contact upon a person substantially incapacitated; indecent act; wrongful sexual contact

(5)(e) Aggravated Sexual Contact by administration of drug, intoxicant, or other similar substance. Article 120 abusive sexual contact upon a person substantially incapacitated; indecent act; wrongful sexual contact

(6) Aggravated Sexual Abuse of a Child. Article 120—aggravated sexual contact with a child; aggravated sexual abuse of a child; indecent liberty with a child; wrongful sexual contact

(7) Aggravated Sexual contact with a Child. Article 120—abusive sexual contact with a child; indecent liberty with a child; wrongful sexual contact

(8) Abusive Sexual Contact. Article 120—wrongful sexual contact; indecent act

(9) Abusive Sexual Contact with a Child. Article 120—indecent liberty with a child; wrongful sexual contact

(10) Indecent Liberty with a Child. Article 120—wrongful sexual contact

f. Maximum punishment.

(1) Rape and Rape of a Child. Death or such other punishment as a court martial may direct.

(2) Aggravated Sexual Assault. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 30 years.

(3) Aggravated Sexual Assault of a Child who has attained the age of 12 years but has not attained the age of 16 years, Aggravated Sexual Abuse of a Child, Aggravated Sexual Contact, and Aggravated Sexual Contact with a Child. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(4) Abusive Sexual Contact with a Child and Indecent Liberty with a Child. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 15 years.

(5) Abusive Sexual Contact. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 7 years.

(6) Indecent Act or Forcible Pandering. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

(7) Wrongful Sexual Contact or Indecent Exposure. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

g. Sample specifications.

(1) Rape.

(a) Rape by using force.

(i) Rape by use or display of dangerous weapon or object.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, cause ____ to engage in a sexual act, to wit: ____, by (using a dangerous weapon or object, to wit: ____ against (him)(her)) (displaying a dangerous weapon or object, to wit: ____ to (him)(her)).

(ii) Rape by suggestion of possession of dangerous weapon or object.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, cause ____ to engage in a sexual act, to wit: ____, by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her) to believe it was a dangerous weapon or object.

(iii) Rape by using physical violence, strength, power, or restraint to any person.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, cause ____ to engage in a sexual act, to wit: ____, by using (physical violence) (strength) (power) (restraint applied to ____), sufficient that (he)(she) could not avoid or escape the sexual conduct.

(b) Rape by causing grievous bodily harm.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20, ____cause to engage in a sexual act, to wit: ____, by causing grievous bodily harm upon (him)(her) (____), to wit: a (broken leg)(deep cut)(fractured skull) (____).

(c) Rape by using threats or placing in fear.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____cause to engage in a sexual act, to wit: ____, by [threatening] [placing (him)(her) in fear] that (he)(she) (__) will be subjected to (death)(grievous bodily harm) (kidnapping) by __.

(d) Rape by rendering another unconscious.

In that ____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____cause to engage in a sexual act, to wit: ____, by rendering (him)(her) unconscious.

(e) Rape by administration of drug, intoxicant, or other similar substance.

In that ____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____cause_to engage in a sexual act, to wit: ____, by administering to (him)(her) a drug, intoxicant, or other similar substance, (by force) (by threat of force) (without (his)(her) knowledge or permission), and thereby substantially impaired (his)(her) ability to [(appraise) (control)] [(his)(her)] conduct.

(2) Rape of a child.

(a) Rape of a child who has not attained the age of 12 years.

In that ____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____engage in a sexual act, to wit: ____ with, a child who had not attained the age of 12 years.

(b) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using force.

(i) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.

In that ____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____engage in a sexual act, to wit: ____, with ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by (using a dangerous weapon or object, to wit: against (him)(her)) (displaying a dangerous weapon or object, to wit: to (him)(her)).

(ii) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.

In that ____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____engage in a sexual act, to wit: ____,

with ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her)__ to believe it was a dangerous weapon or object.

(iii) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.

In that ____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____engage in a sexual act, to wit: ____ with ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by using (physical violence) (strength) (power) (restraint applied to) sufficient that (he)(she) could not avoid or escape the sexual conduct.

(c) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____ engage in a sexual act, to wit: ____, with____, ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by causing grievous bodily harm upon (him)(her)(____), to wit: a (broken leg)(deep cut)(fractured skull)(____).

(d) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____ engage in a sexual act, to wit: ____, with____, ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by [threatening] [placing (him)(her) in fear] that (he)(she) (____) would be subjected to (death)(grievous bodily harm) (kidnapping) by _.

(e) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child unconscious.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____ engage in a sexual act, to wit: ____, with____, ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by rendering (him)(her) unconscious.

(f) Rape of a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____ engage in a sexual act, to wit: ____, with____, ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, by administering to (him)(her) a drug, intoxicant, or other similar substance (by force) (by threat of force) (without (his)(her) knowledge or permission), and thereby substantially impaired (his)(her) ability to [(appraise)(control)][(his)(her)] conduct.

(3) Aggravated sexual assault.

(a) Aggravated sexual assault by using threats or placing in fear.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____ cause ____ to engage in a sexual act, to wit: ____, by [threatening][placing(him)(her) in fear of] [(physical injury to _)(injury to __'s property)(accusation of crime)(exposition of secret)(abuse of military position)(____)].

(b) Aggravated sexual assault by causing bodily harm.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about _____ cause ____ to engage in a sexual act, to wit: ____, by causing bodily harm upon (him)(her)(____), to wit: .

(c) Aggravated sexual assault upon a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or communicating unwillingness.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____ engage in a sexual act, to wit: with____, ____,who was (substantially incapacitated) [substantially incapable of (appraising the nature of the sexual act)(declining participation in the sexual act) (communicating unwillingness to engage in the sexual act)].

(4) Aggravated sexual assault of a child who has attained the age of 12 years but has not attained the age of 16 years.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20, ____ engage in a sexual act, to wit: with____, ____, who had attained the age of 12 years, but had not attained the age of 16 years.

(5) Aggravated sexual contact.

(a) Aggravated sexual contact by using force.

(i) Aggravated sexual contact by use or display of dangerous weapon or object.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ___) (cause ____ to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] by (using a dangerous weapon or object, to wit: ____ against (him)(her)) (displaying a dangerous weapon or object, to wit: ____ to (him)(her)).

(ii) Aggravated sexual contact by suggestion of possession of dangerous weapon or object.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____)(cause ____ to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her)(____) to believe it was a dangerous weapon or object.

(iii) Aggravated sexual contact by using physical violence, strength, power, or restraint to any person.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____,[(engage in sexual contact, to wit: ____ with ____)(cause ____ to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] by using (physical violence) (strength) (power) (restraint applied to ____), sufficient that (he)(she)(____) could not avoid or escape the sexual conduct.

(b) Aggravated sexual contact by causing grievous bodily harm.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____)(cause ____ to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] by causing grievous bodily harm upon (him)(her)(____), to wit: ____ a (broken leg)(deep cut)(fractured skull)(____).

(c) Aggravated sexual contact by using threats or placing in fear.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____)(cause ____ to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] by [(threatening (him)(her)(____)] [(placing(him)(her)(____) in fear] that (he)(she)(____) will be subjected to (death)(grievous bodily harm)(kidnapping) by ____.

(d) Aggravated sexual contact by rendering another unconscious.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____20 ____, [(engage in sexual contact, to wit: with)(cause to engage in sexual contact, to wit: ____, with ____) (cause ____ sexual contact with or by ____, to wit: ____)] by rendering (him)(her)(____) unconscious.

(e) Aggravated sexual contact by administration of drug, intoxicant, or other similar substance.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____)(cause ____ to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] by administering to (him)(her)(____) a drug, intoxicant, or other similar substance, (by force) (by threat of force) (without (his)(her)(____) knowledge or permission), and thereby substantially impaired (his)(her)(____) ability to [(appraise) (control)] [(his)(her)] conduct.

(6) Aggravated sexual abuse of a child.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, engage in a lewd act, to wit: ____ with ____, a child who had not attained the age of 16 years.

(7) Aggravated sexual contact with a child.

(a) Aggravated sexual contact with a child who has not attained the age of 12 years.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____, a child who had not attained the age of 12 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had not attained the age of 12 years) (cause sexual contact with or by ____, a child who had not attained the age of 12 years, to wit: ____)].

(b) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using force.

(i) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by use or display of dangerous weapon or object.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: ____)] by (using a dangerous weapon or object, to wit: ____ against (him)(her)(____)) (displaying a dangerous weapon or object, to wit: ____ to (him)(her)(____)).

(ii) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by suggestion of possession of dangerous weapon or object.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____, a child who had attained the age of 12 years, but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had attained the age of 12 years, but had not attained the age of 16 years, to wit: ____)] by the suggestion of possession of a dangerous weapon or an object that was used in a manner to cause (him)(her)(____) to believe it was a dangerous weapon or object.

(iii) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using physical violence, strength, power, or restraint to any person.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: ____)] by using (physical violence) (strength) (power) (restraint applied to ____) sufficient that (he)(she)(____) could not avoid or escape the sexual conduct.

(c) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by causing grievous bodily harm.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: ____)] by causing grievous bodily harm upon (him)(her)(____), to wit: ____ a (broken leg)(deep cut)(fractured skull)(____).

(d) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by using threats or placing in fear.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: ____)] by [threatening] [placing (him)(her)(____) in fear] that (he)(she)(____) will be subjected to (death) (grievous bodily harm)(kidnapping) by ____.

(e) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by rendering that child or another unconscious.

In that ____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20____, [(engage in sexual contact, to wit: ____

with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had not attained the age of 12 years, but had not attained the age of 16 years, to wit: ____)] by rendering (him)(her)(____) unconscious.

(f) Aggravated sexual contact with a child who has attained the age of 12 years but has not attained the age of 16 years by administration of drug, intoxicant, or other similar substance.

In that ____(personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____, a child who had not attained the age of 12 years but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had not attained the age of 12 years but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had not attained the age of 12 years but had not attained the age of 16 years, to wit: ____)] by administering to (him)(her)(____) a drug, intoxicant, or other similar substance (by force) (by threat of force) (without (his)(her)(____) knowledge or permission), and thereby substantially impaired (his)(her)(____) ability to [(appraise) (control)][(his) (her)] conduct.

(8) Abusive sexual contact.

(a) Abusive sexual contact by using threats or placing in fear.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____) (cause ____ to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] by [(threatening) (placing (him)(her)(____) in fear of)] [(physical injury to ____)(injury to ____;'s property)(accusation of crime)(exposition of secret)(abuse of military position)(____)].

(b) Abusive sexual contact by causing bodily harm.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____) (cause ____ to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] by causing bodily harm upon (him)(her)(____), to wit: (____).

(c) Abusive sexual contact by engaging in a sexual act with a person substantially incapacitated or substantially incapable of appraising the act, declining participation, or substantially incapable of communicating unwillingness.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, [(engage in sexual contact, to wit: ____ with ____) (cause to engage in sexual contact, to wit: ____, with ____) (cause sexual contact with or by ____, to wit: ____)] while (he)(she)(____) was [substantially incapacitated] [substantially incapable of (appraising the nature of the sexual contact) (declining participation in the sexual contact) (communicating unwillingness to engage in the sexual contact)].

(9) Abusive sexual contact with a child.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____,[(engage in sexual contact, to wit: ____ with ____, a child who had attained the age of 12 years but had not attained the age of 16 years)(cause ____ to engage in sexual contact, to wit: ____, with ____, a child who had attained the age of 12 years but had not attained the age of 16 years) (cause sexual contact with or by ____, a child who had attained the age of 12 years but had not attained the age of 16 years, to wit: ____)].

(10) Indecent liberties with a child.

In that ____ (personal jurisdiction data), did, (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, (take indecent liberties) (engage in indecent conduct) in the physical presence of ____, a (female) (male) under 16 years of age, by (communicating the words: to wit: ____) (exposing one's private parts, to wit: ____) (____), with the intent to [(arouse) (appeal to) (gratify) the (sexual desire) of the ____ (or ____)] [(abuse)(humiliate)(degrade) ____].

(11) Indecent act.

In that ____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about ____ 20 ____, wrongfully commit indecent conduct, to wit ____.

(12) Forcible pandering.

In that ____ (personal jurisdiction data), did (at/on board-location), (subject-matter jurisdiction data, if required), on or about ____ 20 ____, compel ____ to engage in [(a sexual act)(sexual contact) (lewd act), to wit: ____] for the purpose of receiving money or other compensation with ____ (a) person(s) to be directed to (him)(her) by the said ____.

(13) Wrongful sexual contact.

In that ____ (personal jurisdiction data), did (at/on board-location), (subject-matter jurisdiction data, if required), on or about ____ 20 ____, engage in sexual contact with ____, to wit: ____, and such sexual contact was without legal justification or lawful authorization and without the permission of ____.

(14) Indecent exposure.

In that ____ (personal jurisdiction data), did (at/on board-location), (subject-matter jurisdiction data, if required), on or about ____ 20 ____, intentionally (expose in an indecent manner (his) (her) (____) (____) while (at the barracks window) (in a public place)(____).

(e) Paragraph 50, Art. 124, Maiming, paragraph (e) is amended to read: e. Maximum Punishment. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 20 years.

(f) Paragraph 51, Article 125, Sodomy, paragraph (d) is amended by deleting the following lesser included offenses under paragraph (d)(1)(b); (d)(2)(c); and (d)(3)(a):

(d)(1)(b) Article 134 indecent acts with a child under 16

(d)(2)(c) Article 134 indecent assault

(d)(3)(a) Article 134 indecent acts with another

(g) Paragraph 51, Article 125, paragraph (d) is amended by adding at the end of paragraph d:

[Note: Consider lesser included offenses under Art. 120 depending on the factual circumstances in each case.]

(h) Paragraph 54, Art. 128, Assault, paragraph (b)(4)(a) is amended to read:

(4) Aggravated Assault.

(a) Assault with a dangerous weapon or other means of force likely to produce death or grievous bodily harm.

(i) That the accused attempted to do, offered to do, or did bodily harm to a certain person;

(ii) That the accused did so with a certain weapon, means, or force;

(iii) That the attempt, offer, or bodily harm was done with unlawful force or violence; and

(iv) That the weapon, means, or force was used in a manner likely to produce death or grievous bodily harm.

(Note: Add any of the following as applicable)

(v) That the weapon was a loaded firearm.

(vi) That the person was a child under the age of 16 years.

(i) Paragraph 54, Art. 128, Assault, paragraph (b)(4)(b) is amended to read:

(4) Aggravated Assault.

(b) Assault in which grievous bodily harm is intentionally inflicted.

(i) That the accused assaulted a certain person;

(ii) That grievous bodily harm was thereby inflicted upon such person;

(iii) That the grievous bodily harm was done with unlawful force or violence; and

(iv) That the accused, at the time, had the specific intent to inflict grievous bodily harm.

(Note: Add any of the following as applicable)

(v) That the injury was inflicted with a loaded firearm.

(vi) That the person was a child under the age of 16 years.

(j) Paragraph 54, Art. 128, Assault, paragraph (c)(4)(a) is amended by adding new paragraph (c)(4)(a)(v) after (c)(4)(a)(iv):

(4) Aggravated Assault.

(a) Assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm.

(v) When committed upon a child under 16 years of age. The maximum punishment is increased when aggravated assault with a dangerous weapon or means likely to produce death or grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense.

(k) Paragraph 54, Art. 128, Assault, paragraph (c)(4)(b) is amended by adding new paragraph (c)(4)(b)(iv):

(4) Aggravated Assault.

(b) Assault in which grievous bodily harm is intentionally inflicted.

(iv) When committed upon a child under 16 years of age. The maximum punishment is increased when aggravated assault with intentional infliction of grievous bodily harm is inflicted upon a child under 16 years of age. Knowledge that the person assaulted was under the age of 16 years is not an element of the offense.

(l) Paragraph 54, Art. 128, Assault, paragraph (d)(6) is amended to read: d. Lesser included offenses.

(6) Assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm. Article 128 simple assault; assault consummated by a battery; (when committed upon a child under the age of 16 years—assault consummated by a battery upon a child under the age of 16 years).

(m) Paragraph 54, Art. 128, Assault, paragraph (d)(7) is amended to read: d. Lesser included offenses.

(7) Assault in which grievous bodily harm is intentionally inflicted. Article 128 simple assault; assault consummated by a battery; assault with a dangerous weapon; (when committed upon a child under the age of 16 years—assault consummated by a battery upon a child under the age of 16 years).

(n) Paragraph 54, Art. 128, Assault, paragraph (e)(8) is amended to read:

e. Maximum punishment.

(8) Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm.

After current (a), change (b) as follows below and current (b) becomes (c):

(b) Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm when committed upon a child under the age of 16 years. Dishonorable discharge, total forfeitures, and confinement for 5 years.

(o) Paragraph 54, Art. 128, Assault, paragraph (e)(9) is amended to read:

e. Maximum punishment.

(9) Aggravated assault in which grievous bodily harm is intentionally inflicted.

After current (a), change (b) as follows below and current (b) becomes (c):

(b) Aggravated assault in which grievous bodily harm is intentionally inflicted when committed upon a child under the age of 16 years. Dishonorable discharge, total forfeitures, and confinement for 8 years.

(p) Paragraph 54, Art. 128, Assault, paragraph (f)(8) is amended to read:

f. Sample specifications.

(8) Assault, Aggravated with a dangerous weapon, means or force.

In that ____ (personal jurisdiction data), did, (at/on board location)(subject matter jurisdiction data, if required), on or about ____ 20 ____, commit an assault upon ____ (a child under the age of 16 years) by (shooting) (pointing) (striking) (cutting) (____) (at him/her)(him/her) (in)(on)(the ____) with (a dangerous weapon)(a (means)(force) likely to produce death or grievous bodily harm), to wit: a (loaded firearm) (pickax) (bayonet) (club) (____).

(q) Paragraph 54, Art. 128, Assault, paragraph (f)(8) is amended to read:

f. Sample specifications.

(9) Assault, aggravated inflicting grievous bodily harm.

In that ____ (personal jurisdiction data), did, (at/on board location)(subject matter jurisdiction data, if required), on or about ____ 20 ____, commit an assault upon ____ (a child under the age of 16 years) by (shooting) (striking) (cutting) (____) (him/her)(on) the with a (loaded firearm)(club)(rock)(brick)(and did thereby intentionally inflict grievous bodily harm upon him/her, to wit: a (broken leg)(deep cut)(fractured skull)(____).

(r) Paragraph 64, Article 134 Assault w/ intent to commit murder, voluntary, manslaughter, rape, robberty, sodomy, arson, burglary, or housebreaking, paragraph (c)(4), 1st sentence, is amended to read: (c)(4) Assault with intent to commit rape. In assault with intent to commit rape, the accused must have intended to complete the offense.

(s) Paragraph 64, Article 134 Assault w/ intent to commit murder, voluntary, manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking, is amended by deleting the following lesser included offense under paragraph (d)(3)(b):

(d)(3)(b) Article 134 indecent assault

(t) New paragraph 68a, Article 134—(Child Endangerment) is inserted:

68a. Article 134—(Child Endangerment)

a. Text. See paragraph 60.

b. Elements.

Child Endangerment

(1) That the accused had a duty for the care of a certain child;

(2) That the child was under the age of 16 years;

(3) That the accused endangered the child's mental or physical health, safety, or welfare through design or culpable negligence;

and

(4) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. Explanation.

(1) In general. This offense is intended to prohibit and therefore deter child endangerment through design or culpable negligence.

(2) Design. Design means on purpose, intentionally, or according to plan and requires specific intent to endanger the child.

(3) Culpable negligence. Culpable negligence is a degree of carelessness greater than simple negligence. It is a negligent act or omission accompanied by a culpable disregard for the foreseeable consequences to others of that act or omission. In the context of this offense, culpable negligence may include acts that, when viewed in the light of human experience, might foreseeably result in harm to a child, even though such harm would not necessarily be the natural and probable consequences of such acts. In this regard, the age and maturity of the child, the conditions surrounding the neglectful conduct, the proximity of assistance available, the nature of the environment in which the child may have been left, the provisions made for care of the child, and the location of the

parent or adult responsible for the child relative to the location of the child, among others, may be considered in determining whether the conduct constituted culpable negligence.

(4) Harm. Actual physical or mental harm to the child is not required. The offense requires that the accused's actions reasonably could have caused physical or mental harm or suffering. However, if the accused's conduct does cause actual physical or mental harm, the potential maximum punishment increases. See Paragraph 54(c)(4)(a)(iii) for an explanation of ''grievous bodily harm''.

(4) Endanger. ''Endanger'' means to subject one to reasonable probability of harm.

(5) Age of victim as a factor. While this offense may be committed against any child under 16, the age of the victim is a factor in the culpable negligence determination. Leaving a teenager alone for an evening may not be culpable (or even simple) negligence; leaving an infant or toddler for the same period might constitute culpable negligence. On the other hand, leaving a teenager without supervision for an extended period while the accused was on temporary duty outside commuting distance might constitute culpable negligence.

(6) Duty required. The duty of care is determined by the totality of the circumstances and may be established by statute, regulation, legal parent-child relationship, mutual agreement, or assumption of control or custody by affirmative act. When there is no duty of care of a child, there is no offense under this paragraph. Thus, there is no offense when a stranger makes no effort to feed a starving child or an individual/neighbor not charged with the care of a child does not prevent the child from running and playing in the street.

d. Lesser included offenses.

(1) Child Endangerment by Design.

Article 134—Child Endangerment by culpable negligence.

Article 80—Attempts.

e. Maximum punishment.

i. Endangerment by design resulting in grievous bodily harm. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 8 years.

ii. Endangerment by design resulting in harm. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 5 years.

iii. Other cases by design. Dishonorable discharge, forfeiture of all pay and allowances and confinement for 4 years.

iv. Endangerment by culpable negligence resulting in grievous bodily harm. Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 3 years.

v. Endangerment by culpable negligence resulting in harm. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 2 years.

vi. Other cases by culpable negligence. Bad-conduct discharge, forfeiture of all pay and allowances, and confinement for 1 year.

f. Sample specification.

i. Resulting in grievous bodily harm.

In that _____(personal jurisdiction data),(at/on board-location) (subject matter jurisdiction data, if required) on or about _____, 20_____, had a duty for the care of _____, a child under the age of 16 years and did endanger the (mental health) (physical health)(safety)(welfare) of said _____, by (leaving the said _____ unattended in his quarters for over _____ hours/days with no adult present in the home) (by failing to obtain medical care for the said _____'s diabetic condition) (_____), and that such conduct (was by design)(constituted culpable negligence) (which resulted in grievous bodily harm, to wit:) (broken leg)(deep cut)(fractured skull)(_____)).

ii. Resulting in harm.

In that____(personal jurisdiction data),(at/on board—location) (subject matter jurisdiction data, if required) on or about____, 20____, had a duty for the care of____, a child under the age of 16 years, and did endanger the (mental health) (physical health)(safety)(welfare) of said____, by (leaving the said ____unattended in his quarters for over ____hours/days with no adult present in the home) (by failing to obtain medical care for the said____'s diabetic condition) (____), and that such conduct (was by design)(constituted culpable negligence) (which resulted in (harm, to wit:) (a black eye)(bloody nose)(minor cut)(____).

iii. Other cases.

In that____(personal jurisdiction data),(at/on board—location) (subject matter jurisdiction data, if required) on or about ____, 20____, was responsible for the care of____, a child under the age of 16 years, and did endanger the (mental health) (physical health)(safety)(welfare) of said____, by (leaving the said ____unattended in his quarters for over ____hours/days with no adult present in the home) (by failing to obtain medical care for the said____'s diabetic condition) (____), and that such conduct (was by design)(constituted culpable negligence).

(u) Paragraph 63, Article 134 Assault, Indecent is deleted.

(v) Paragraph 87, Indecent acts or liberties with a child is deleted.

(w) Paragraph 88, Indecent Exposure is deleted.

(x) Paragraph 90, Indecent acts with another is deleted.

(y) Paragraph 89, Indecent language, paragraph (c), is amended to read:

c. Explanation. ''Indecent'' language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. Language is indecent if it tends reasonably to corrupt morals or incite libidinous thoughts. The language must violate community standards. See paragraph 45 if the communication was made in the physical presence of a child.

(u) Paragraph 97. Article 134 Pandering and Prostitution is amended by deleting ''compel'' throughout subsection (b)(2) to read:

b. Elements

(2) Pandering by inducing, enticing, or procuring act of prostitution.

(a) That the accused induced, enticed, or procured a certain person to engage in an act of sexual intercourse for hire and reward with a person to be directed to said person by the accused;

(b) That this inducing, enticing, or procuring was wrongful;

(c) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(v) Paragraph 97. Article 134 Pandering and Prostitution is amended by deleting ''compel'' throughout the subtitle and subsection (f)(2) to read:

(*2*) Inducing, enticing, or procuring act of prostitution.

In that____ (personal jurisdiction data), did (at/on board—location) (subject-matter jurisdiction data, if required), on or about____ 20____, wrongfully (induce) (entice) (procure) ____to engage in (an act)(acts) of (sexual intercourse for hire and reward) with persons to be directed to (him/her) by the said____.

Sec. 4. These amendments shall take effect on [30 days after signature].

(a) Nothing in these amendments shall be construed to make punishable any act done or omitted prior to [30 days after signature] that was not punishable when done or omitted.

(b) Nothing in these amendments shall be construed to invalidate any nonjudicial punishment proceedings, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to

[30 days after signature], and any such nonjudicial punishment, restraint, investigation, referral of charges, trial, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

The White House, Changes to the Discussion accompanying the Manual for Courts Martial, United States

(a) Amend the Discussion accompanying R.C.M. 810(d) to read as follows:

''The trier of fact is not bound by the sentence previously adjudged or approved at a rehearing. The members should not be advised of the sentence limitation under this rule. See R.C.M. 1005(e)(1). An appropriate sentence on a retried or reheard offense should be adjudged without regard to any credit to which the accused may be entitled. See R.C.M. 103(2) and R.C.M. 103(3) as to when a rehearing may be a capital case.''

(b) Insert the following new Discussion section after RCM 916(j):

Discussion

The statutory text of Article 120(r) specifically limits the affirmative defense for mistake of fact as to consent to Article 120(a) rape, Article 120(c) aggravated sexual assault, Article 120(e) aggravated sexual contact, and Article 120(h) abusive sexual contact. For all other offenses under Article 120, consent is not an issue and mistake of fact as to consent is not an affirmative defense.

(c) Amend the Discussion accompanying RCM 916(j)(2) in the 3rd paragraph, 1st sentence, to read:

Examples of offenses in which the accused's intent or knowledge is immaterial include: rape of a child, aggravated sexual contact with a child, or indecent liberty with a child (if the victim is under 12 years of age, knowledge or belief as to age is immaterial).

(d) Amend the Discussion accompanying R.C.M. 917(c) by adding the following sentence after the last sentence in the Discussion:

''See R.C.M. 1102(b)(2) for military judge's authority, upon motion or sua sponte, to enter finding of not guilty after findings but prior to authentication of the record.''

(e) Amend the Discussion accompanying R.C.M. 1005(e)(1) to read as follows:

''The maximum punishment that may be adjudged is the lowest of the total permitted by the applicable paragraph(s) in Part IV for each separate offense of which the accused was convicted (see also R.C.M. 1003 concerning additional limits on punishments and additional punishments which may be adjudged) or the jurisdictional limit of the court-martial (see R.C.M. 201(f) and R.C.M. 1301(d)). See also discussion to RCM 810(d). The military judge may upon request or when otherwise appropriate instruct on lesser punishments. See R.C.M. 1003. If an additional punishment is authorized under R.C.M. 1003(d), the members must be informed of the basis for the increased punishment.

A carefully drafted sentence worksheet ordinarily should be used and should include reference to all authorized punishments in the case.''

(f) A Discussion accompanying R.C.M. 1107(f)(5)(A) is inserted to read as follows:

''In approving a sentence not in excess of or more severe than one previously approved (see R.C.M. 810(d)), a convening authority is prohibited from approving a punitive discharge more severe than one formerly approved, *e.g.* a convening authority is prohibited from approving a dishonorable discharge if a bad conduct discharge had formerly been approved. Otherwise, in approving a sentence not in excess of or more severe than one previously imposed, a convening authority is not limited to approving the same or lesser type of 'other punishments'' formerly approved.''

Changes to Appendix 12, Maximum Punishment Chart

Appendix 12 is amended as follows:

Amend Article 120 by deleting the following:

Rape

Carnal Knowledge

With child at least 12

With child under the age of 12

Amend Article 120 by inserting the following:

Rape and Rape of a Child Death,	DD, BCD	Life ...	Total
Aggravated Sexual Assault.	DD, BCD	30 yrs	Total
Aggravated Sexual Assault of a Child.	DD, BCD	20 yrs	Total
Aggravated Sexual Abuse of a Child.	DD, BCD	20 yrs	Total
Aggravated Sexual Contact.	DD, BCD	20 yrs	Total
Aggravated Sexual Contact with a Child.	DD, BCD	20 yrs	Total
Abusive Sexual Contact with a Child.	DD, BCD	15 yrs	Total
Indecent Liberty with a Child.	DD, BCD	15 yrs	Total
Abusive Sexual Contact.	DD, BCD	7 yrs	Total
Indecent Act	DD, BCD	5 yrs	Total
Forcible Pandering.	DD, BCD	5 yrs	Total
Wrongful Sexual Contact.	DD, BCD	1 yr ..	Total
Indecent Exposure.	DD, BCD	1 yr ..	Total

Amend Article 124 to read:

Maiming	DD, BCD	20 yrs	Total

Amend Article 128 by inserting the following:

Aggravated assault with a dangerous weapon or other means of force to produce death or grievous bodily harm when committed upon a child under the age of 16 years.

	DD, BCD	5 yrs	Total

Aggravated assault in which grievous bodily harm is intentionally inflicted when committed upon a child under the age of 16 years

X	DD, BCD	8 yrs	Total

Amend Article 134 by inserting:

Child Endangerment:

Endangerment by design resulting in grievous bodily harm.	DD, BCD	8 yrs	Total
Endangerment by design resulting in harm.	DD, BCD	5 yrs	Total
Other cases by design.	DD, BCD	4 yrs	Total
Endangerment by culpable negligence resulting in grievous bodily harm.	DD, BCD	3 yrs	Total
Endangerment by culpable negligence resulting in harm.	BCD	2 yrs	Total
Other cases by culpable negligence BCD.	1 yr	Total	

Amend Article 134 by deleting the following:

Assault—Indecent

Indecent Acts of Liberties with a Child

Indecent Exposure

Indecent Acts with Another

Changes to Appendix 21, Analysis of Rules for Courts Martial

(a) Amend the Analysis accompanying R.C.M. 916(b) by inserting the following paragraph at the end thereof:

200__ Amendment. Changes to this paragraph, deleting ''carnal knowledge'',

are based on section 552 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 6 January 2006, which supersedes the previous paragraph 45, Rape and Carnal Knowledge, in its entirety and replaces paragraph 45 with Rape, sexual assault and other sexual misconduct.

(b) Amend the Analysis accompanying R.C.M. 916(j)(2) by inserting the following paragraph at the end thereof:

200__ Amendment. Changes to this paragraph, deleting ''carnal knowledge'' and consistent language, are based on section 552 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 6 January 2006, which supersedes the previous paragraph 45, Rape and Carnal Knowledge, in its entirety and replaces paragraph 45 with Rape, sexual assault and other sexual misconduct.

(c) Insert a new Analysis section to accompany new subparagraph R.C.M. 916(j)(3) at the end of the analysis discussing subsection RCM 916(j):

200__ Amendment. This paragraph is new and is based on the mistake of fact defense incorporated in section 552 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 6 January 2006, which supersedes the previous paragraph 45, Rape and Carnal Knowledge, in its entirety and replaces paragraph 45 with Rape, sexual assault and other sexual misconduct.

(d) Amend the Analysis accompanying R.C.M. 920(e) by inserting the following paragraph at the end thereof:

200__ Amendment. Changes to this paragraph, deleting ''carnal knowledge'' and consistent language, are based on section 552 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 6 January 2006, which supersedes the previous paragraph 45, Rape and Carnal Knowledge, in its entirety and replaces paragraph 45 with Rape, sexual assault and other sexual misconduct.

(e) Amend the Analysis accompanying R.C.M. 1004(c) by inserting the following paragraph at the end thereof :

200__ Amendment. Changes to this paragraph adding sexual offenses other than rape are based on subsection (d) of section 552 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 6 January 2006, which supersedes the previous paragraph 45, Rape and Carnal Knowledge, in its entirety and replaces paragraph 45 with Rape, sexual assault and other sexual misconduct.

(f) Amend the analysis accompanying R.C.M. 1102(d) by inserting the following paragraph at the end thereof:

200__ Amendment. For purposes of this rule, the list of appropriate reviewing authorities included in the 1994 amendment includes any court authorized to review cases on appeal under the UCMJ.

Changes to Appendix 22, Analysis of the Military Rules of Evidence

(a) Amend the Analysis accompanying MRE 412, Relevance of alleged victim's sexual behavior or sexual predisposition, by inserting the following paragraph at the end thereof:

200__ Amendment. This amendment is intended to aid practitioners in applying the balancing test of MRE 412. Specifically, the amendment clarifies: (1) That under MRE 412, the evidence must be relevant for one of the purposes highlighted in subdivision (b); (2) that in conducting the balancing test, the inquiry is whether the probative value of the evidence outweighs the danger of unfair prejudice to the victim's privacy; and (3) that even if the evidence is admissible under MRE 412, it may still be excluded under MRE 403. The proposed changes highlight current practice. See *U.S.* v. *Banker*, 60 M.J. 216, 223 (2004) (Citing ''It would be illogical if the judge were to evaluate evidence 'offered by the accused' for unfair prejudice to the accused. Rather, in the context of this rape shield statute, the prejudice in question is, in part, that to the privacy interests of the alleged victim. Sanchez, 44 M.J. at 178 (''[I]n determining admissibility there must be a weighing of the probative value of the evidence against the interest of shielding the victim's privacy.'').''

Moreover, the amendment clarifies that MRE 412 applies in all cases involving a sexual offense wherein the person against whom the evidence is offered can reasonably be characterized as a ''victim of the alleged sexual offense.'' Thus, the rule applies to: ''consensual sexual offense'', ''nonconsensual sexual offenses''; sexual offenses specifically proscribed under the UCMJ, *e.g.*, rape, aggravated sexual assault, etc.; those federal sexual offenses DoD is able to prosecute under clause 3 of Article 134, U.C.M.J., *e.g.*, 18 U.S.C. § 2252A (possession of child pornography); and state sexual offenses DoD is able to assimilate under the Federal Assimilative Crimes Act (18 U.S.C. § 13).

(b) Amend the analysis accompanying M.R.E. 503(b) by inserting the following paragraph at the end thereof:

''200__ Amendment: The previous subsection (2) of MRE 503(b) was renumbered subsection (3) and the new subsection (2) was inserted to define the term ''clergyman's assistant.''

(c) Amend the Analysis accompanying M.R.E. 504 by inserting the following paragraph at the end thereof:

''200_ Amendment: (d) Definition. Rule 504(d) modifies the rule and is intended to afford additional protection to children. Previously, the term ''a child of either,'' referenced in Rule 504(c)(2)(A), did not include a ''de facto'' child or a child who is under the physical custody of one of the spouses but lacks a formal legal parent-child relationship with at least one of the spouses. See U.S. v. McCollum, 58 M.J. 323 (C.A.A.F. 2003). Prior to this amendment, an accused could not invoke the spousal privilege to prevent disclosure of communications regarding crimes committed against a child with whom he or his spouse had a formal, legal parent-child relationship; however, the accused could invoke the privilege to prevent disclosure of communications where there was not a formal, legal parent-child relationship. This distinction between legal and ''de facto'' children resulted in unwarranted discrimination among child victims and ran counter to the public policy of protecting children. Rule 504(d) recognizes the public policy of protecting children by addressing disparate treatment among child victims entrusted to another. The ''marital communications privilege * * * should not prevent 'a properly outraged spouse with knowledge from testifying against a perpetrator' of child abuse within the home regardless of whether the child is part of that family.'' *U.S.* v. *McCollum*, 58 M.J. 323, 342, fn.6 (C.A.A.F. 2003) (citing U.S. v. Bahe, 128 F.3d 1440, 1446 (10th Cir. 1997)).

Changes to Appendix 23, Analysis of Punitive Articles

(a) The Analysis accompanying Article 118, Murder, is amended by inserting the following:

43. Article 118 Murder

a. Text.

b. Elements.

200__ Amendment. Paragraph (4) of the text and elements has been amended for consistency with the changes to Article 118 under section 552 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 6 January 2006. See subsection (d) of Section 552.

(b) The Analysis accompanying Article 119, Manslaughter, is amended by inserting the following:

44. Article 119 Manslaughter

b. Elements.

200__ Amendment. Paragraph (4) of the elements has been amended for consistency with the changes to Article 118 under section 552 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 6 January 2006. See subsection (d) of Section 552.

(c) The Analysis accompanying Article 120, Rape, Sexual Assault, and other Sexual Misconduct, is amended by inserting the following:

45. Article 120—Rape, Sexual Assault, and other Sexual Misconduct 200__ Amendment. Changes to this paragraph are contained in Div. A. Title V. Subtitle E, section 552(a)(1) of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 119 Stat. 3257 (6 January 2006), which supersedes the previous paragraph 45, Rape and Carnal Knowledge, in its entirety and replaces paragraph 45 with Rape, sexual assault and other sexual misconduct. In accordance with section 552(c) of that Act, Pub. L. 109 163, 119 Stat. 3263, the amendment to the Article applies only with respect to offenses committed on or after 1 October 2007.

Nothing in these amendments invalidates any nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action begun prior to 1 October 2007. Any such nonjudicial punishment proceeding, restraint, investigation, referral of charges, trial in which arraignment occurred, or other action may proceed in the same manner and with the same effect as if these amendments had not been prescribed.

This new Article 120 consolidates several sexual misconduct offenses and is generally based on the Sexual Abuse Act of 1986, 18 U.S.C. Sections 2241–2245. The following is a list of offenses that have been replaced by this new paragraph 45:

(1) Paragraph 63, 134 Assault—Indecent, has been replaced in its entirety by three new offenses under paragraph 45. See subsections (e) Aggravated Sexual Contact, (h) Abusive Sexual Contact, and (m) Wrongful Sexual Contact.

(2) Paragraph 87, 134 Indecent Acts or Liberties with a Child, has been replaced in its entirety by three new offenses under paragraph 45. See subsections (g) Aggravated Sexual Contact with a Child, (i) Abusive Sexual Contact with a Child, and (j) Indecent Liberty with a Child.

(3) Paragraph 88, Article 134 Indecent Exposure, has been replaced in its entirety by a new offense under paragraph 45. See subsection (n) Indecent Exposure.

(4) Paragraph 90, Article 134 Indecent Acts with Another, has been replaced in its entirety by a new offense under paragraph 45. See subsection (k) Indecent Act.

(5) Paragraph 97, Article 134 Pandering and Prostitution, has been amended. The act of compelling another person to engage in an act of prostitution with another person will no longer be an offense under paragraph 97 and has been replaced by a new offense under paragraph 45. See subsection (l), Forcible Pandering.

c. Explanation. Subparagraph (3), definition of ''indecent'', is taken from paragraphs 89.c and 90.c of the Manual (2005 ed.) and is intended to consolidate the definitions of ''indecent,'' as used in the former offenses under Article 134 of ''Indecent acts or liberties with a child,'' ''Indecent exposure,'' and ''Indecent acts with another,'' formerly at paragraphs 87, 88, and 90 of the 2005 Manual, and ''Indecent language,'' at paragraph 89. The application of this single definition of ''indecent'' to the offenses of ''Indecent liberty with a child,'' ''Indecent act,'' and ''Indecent exposure'' under Article 120 is consistent with the construction given to the former Article 134 offenses in the 2005 Manual that were consolidated into Article 120. See *e.g.* United States v. Negron, 60 M.J. 136 (C.A.A.F. 2004).

e. Additional Lesser Included Offenses. The test to determine whether an offense is factually the same as another offense, and therefore lesser-included to that offense, is the ''elements'' test. United States v. Foster, 40 M.J. 140, 142 (C.M.A.1994). Under this test, the court considers ''whether each provision requires proof of a fact which the other does not.'' Blockburger, 284 U.S. at 304, 52 S.Ct. 180. Rather than adopting a literal application of the elements test, the Court stated that resolution of lesser-included claims ''can only be resolved by lining up elements realistically and determining whether each element of the supposed 'lesser' offense is rationally derivative of one or more elements of the other offense—and vice versa.'' Foster, 40 M.J. at 146. Whether an offense is a lesser-included offense is a matter of law that the Court will consider de novo. United States v. Palagar, 56 M.J. 294, 296 (C.A.A.F.2002).

f. Maximum punishment. See 1995 Amendment regarding maximum punishment of death.

(d) The analysis accompanying Article 124, Maiming, is amended by inserting the following at the end of current analysis paragraph:

e. Maximum punishment. 200__ amendment. The maximum punishment for the offense of maiming was increased from 7 years confinement to 20 years confinement, consistent with the federal offense of maiming, 18 U.S.C. § 114.

(e) The Analysis accompanying Article 125, Sodomy, is amended by inserting the following:

d. Lesser included offenses.

200__ Amendment.

The former Paragraph 87, (1)(b), Article 134 Indecent Acts or Liberties with a Child has been replaced in its entirety by paragraph 45.

The former Paragraph 63, (2)(c), Article 134 Assault—Indecent, has been replaced in its entirety by paragraph 45.

The former Paragraph 90(3)(a), Article 134 Indecent Acts with Another, has been replaced in its entirety by paragraph 45.

Lesser included offenses under Article 120 should be considered depending on the factual circumstances in each cases.

(f) The analysis to Article 128, Assault, is amended by inserting the following at the end of current analysis paragraph:

e. Maximum punishment. 200__ amendment. The maximum punishments for some aggravated assault offenses were established to recognize the increased severity of such offenses when children are the victims. These maximum punishments are consistent with the maximum punishments of the Article 134 offense of Child Endangerment, established in 200__.

(g) The Analysis accompanying Article 134, Assault indecent, is amended by inserting the following:

63. Article 134—Assault-indecent

200__ Amendment. This paragraph has been replaced in its entirety by paragraph 45. See Article 120(e) Aggravated Sexual Contact, (h) Abusive Sexual Contact, and (m) Wrongful Sexual Contact.

(h) The Analysis accompanying Article 134—Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking, is amended by inserting the following:

64. Article 134—Assault—with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking

200__ Amendment. This paragraph has been amended for consistency with the changes to Article 118 under section 552 of the National Defense

Authorization Act for Fiscal Year 2006, Pub. L. 109–163, 6 January 2006. See subsection (d) of Section 552.

(i) The analysis to Article 134 is amended by inserting the following:

68a. Article 134 (Child Endangerment)

200__ Amendment. This offense is new to the Manual for Courts Martial. Child neglect was recognized in U.S. v. Vaughan, 58 M.J. 29 (C.A.A.F. 2003). It is based on military custom and regulation as well as a majority of state statutes and captures the essence of child neglect, endangerment, and abuse.

(j) The Analysis accompanying Article 134—Indecent acts with a child, is amended by inserting the following:

87. Article 134—Indecent acts with a child

200__ Amendment. This paragraph has been replaced in its entirety by paragraph 45. See Article 120 (g) Aggravated Sexual Contact with a Child, (i) Abusive Sexual Contact with a Child, and (j) Indecent Liberty with Child.

(k) The Analysis accompanying Article 134—Indecent Exposure is amended by inserting the following:

88. Article 134—Indecent Exposure

200__ Amendment. This paragraph has been replaced in its entirety by paragraph 45. See Article 120 (n) Indecent Exposure.

(l) The Analysis accompanying Article 134—Indecent Exposure is amended by inserting the following:

88. Article 134—Indecent Exposure

200__ Amendment. This paragraph has been replaced in its entirety by paragraph 45. See Article 120 (n) Indecent Exposure.

(j) The Analysis accompanying Article 134—Pandering and Prostitution is amended by inserting the following:

97. Article 134—Pandering and prostitution

200 Amendment. This paragraph has been amended. The act of compelling another person to engage in an act of prostitution with another person will no longer be punished under paragraph 97 and has been replaced by a new offense under paragraph 45. See Article 120 (l) Forcible Pandering.

Dated: December 20, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. E6–22107 Filed 12–27–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Final Environmental Impact Statement for the San Juan Creek Watershed/ Western San Mateo Creek Watershed Special Area Management Plan (SAMP), Orange County, CA

AGENCY: Department of Defense, Department of the Army, Corps of Engineers, Los Angeles District Regulatory Branch.

ACTION: Notice of Availability for a Final EIS.

SUMMARY: The U.S. Army Corps of Engineers, Regulatory Branch has completed a Final EIS for the San Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan (SAMP). The San Juan Creek Watershed/Western San Mateo Creek Watershed SAMP establishes three alternative permitting procedures that balance aquatic resource protection and reasonable economic development for the San Juan Creek Watershed and western San Mateo Creek Watershed.

DATES: The Final EIS will be available to the public for 30 days from December 29, 2006 to January 29, 2007. After the 30 day availability period, a Record of Decision will be issued.

FOR FURTHER INFORMATION CONTACT: Mr. Jae Chung, Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, California, 90053–2325, (213) 452–3292, *yong.j.chung@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Under section 404 of the Clean Water Act, the Corps is authorized to issue permits for activities that discharge dredged and/or fill materials into waters of the U.S., including wetlands, for roads, developments, utilities, and other activities. For the San Juan Creek and western San Mateo Creek Watersheds, the Corps is proposing a watershed-based SAMP to balance aquatic resource protection and reasonable economic development. The SAMP is an improvement over the current incremental case-by-case approach, which does a less effective job of taking a watershed perspective of aquatic resources and considering the needs of future permit applicants. The SAMP involves characterizing aquatic resource conditions and processes through the watershed, establishing alternative permitting procedures more appropriate for the given aquatic resources in the watershed, and developing a coordinated aquatic resources management framework.

The Draft EIS was made available to the public on November 21, 2005. The Corps accepted written comments until January 16, 2006, and accepted oral comments in a public hearing dated December 6, 2006. The Corps received ten written comments throughout the comment period and two oral comments at the public hearing.

The Final EIS is available to the public at the reference desks at the following local libraries: Mission Viejo Library, 100 Civic Center, Mission Viejo, CA 92691; San Clemente Library, 242 Avenida Del Mar, San Clemente, CA 92672; Laguna Hills Library, 25555 Alicia Parkway, Laguna Hills, CA 92653; Laguna Niguel Library, 30341 Crown Valley Parkway, Laguna Niguel, CA 92656; San Juan Capistrano Library, 31495 El Camino Real, San Juan Capistrano, CA 92675; Rancho Santa Margarita Library, 30902 La Promesa, Rancho Santa Margarita, CA 92688; and Dana Point Library, 33841 Niguel Road, Laguna Niguel, CA 92656. Information on obtaining electronic copies of the Final EIS is available by phoning or mailing the contact person or by visiting *http://www.spl.usace.army.mil/samp/sanjuancreeksamp.htm.*

Mark Durham,

Chief, South Coast Section, Regulatory Branch.

[FR Doc. E6–22311 Filed 12–27–06; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy (DON). Navy Case No. 73,962: Light Weight Thermal Heat Transfer, U.S. Patent Application No. 10/056,812 filed on January 24, 2002.//Navy Case No. 76,519: Method For Reducing Hazards, U.S. Patent Application No. 11/220,189 filed on September 01, 2005.//Navy Case No. 82,261: System For Implementing A GVP, U.S. Patent Application No. 10/255,413 filed on September 26, 2004.//Navy Case No. 83,036: Imagery Analysis Tool, U.S. Patent Application No. 11/417,283 filed on May 01, 2006.//Navy

Case No. 96,721: Wireless Blade Monitoring System, U.S. Patent Application No. 11/198,415 filed on August 04, 2005.//Navy Case No. 83,683: Method For Comparing Tabular Data, U.S. Patent Application No. 10/956,522 filed on September 23, 2004.// Navy Case No. 84,935: Cleaning Device For Fiber Optic Connectors, U.S. Patent Application No. 11/499,977 filed on August 03, 2006.//Navy Case No. 95,903: Bond Integrity Tool, U.S. Patent Application No. 11/417,287 filed on May 01, 2006.//Navy Case No. 96,399: Fluids Mixing Nozzle, U.S. Patent Application No. 11/499,179 filed on June 05, 2006.// Navy Case No. 96,400: Apparatus And Method To Amalgamate Substances, U.S. Patent Application No. 11/357,460 filed on February 14, 2006.// Navy Case No. 97,397: Target Identification Method Using Cepstral Coefficients, U.S. Patent Application No. 11/434,573 filed on May 03, 2006.

ADDRESSES: Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Office, Office of Research and Technology Applications, Building 505, Room 116, 22473 Millstone Road, Patuxent River, MD 20670, 301–342–5586 or e-mail *Paul.Fritz@navy.mil.*

DATES: Request for data, samples, and inventor interviews should be made prior to April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Office of Research and Technology Applications, Building 505, Room 116, Naval Air Warfare Center Aircraft Division, 22473 Millstone Road, Patuxent River, MD 20670, 301–342–5586, *Paul.Fritz@navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these inventions. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business Office, Office of Research and Technology Applications, Building 505, Room 116, 22473 Millstone Road, Patuxent River, MD 20670.

The DON, in its decisions concerning the granting of licenses, will give special consideration to existing licensee's, small business firms, and consortia involving small business firms. The DON intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

PCT application may be filed for each of the patents as noted above. The DON intends that licensees interested in a license in territories outside of the United States will assume foreign prosecution and pay the cost of such prosecution.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: December 19, 2006.

M. A. Harvison

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

[FR Doc. E6–22278 Filed 12–27–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities Advisory Committee

AGENCY: Office of Safe and Drug-Free Schools, Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of The Safe and Drug-Free Schools and Communities Advisory Committee. The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Tuesday, January 16, 2006 and Wednesday, January 17, 2007.

Time: January 16,, 2007: 8:30 a.m. to 5 p.m.; January 17, 2007: 8 a.m. to 11:30 a.m.

ADDRESSES: The Committee will meet at the U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Catherine Davis, Executive Director, The Safe and Drug-Free Schools and Communities Advisory Committee, Room 1E110B, 400 Maryland Avenue, SW., Washington, DC, telephone: (202) 205–4159, e-mail: *OSDFSC@ed.gov*.

SUPPLEMENTARY INFORMATION: The Committee was established to provide advice to the Secretary of Federal, State, and local programs designed to create safe and drug-free schools, and on issues related to crisis planning. The focus of this meeting is to address the new tasks assigned to the Advisory Committee as a result of the Conference on School Safety held on October 10, 2006. Issues to be discussed include: coordination with non-public schools on safety and emergency plans; the unique needs of urban and rural districts; and the mental health/trauma needs of students. The agenda includes panel presentations by invited speakers providing an overview of the issues, as well as discussion by the Committee. Further, the Committee will address strategies to accomplish their mission as it is stated in the Committee charter.

Individuals who need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative formats) should notify Catherine Davis at *OSDFSC@ed.gov* or (202) 250–4169 no lager than January 9, 2007. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because limited space is available at the meeting site. Please notify Catherine Davis at *OSDFSC@ed.gov* or (202) 205–4169 of your intention to attend the meeting.

Opportunities for public comment are available on January 17 from 8:40–9:15 a.m. on a first come, first served basis. Comments presented at the meeting are limited to 5 minutes in length. Written comments to accompany oral remarks are optional. Five copies of written comments are recommended and should be submitted to the committee Chairman at the meeting.

Request for Written Comments: We invite the public to submit written comments relevant to the focus of the Advisory Committee. We would like to receive written comments from members of the public no later than April 30, 2007.

ADDRESSES: Submit all comments to the Advisory Committee using one of the following methods: 1. Internet. We encourage the public to submit comments through the Internet to the following address: *OSDFSC@ed.gov* 2. Mail. The public may also submit comments via mail to Catherine Davis, Office of Safe and Drug-Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110B, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

Records are kept of all Committee proceedings and are available for public inspection at the staff office for the Committee from the hours of 9 a.m. to 5 p.m.

Raymond Simon,

U.S. Department of Education.

[FR Doc. 06–9909 Filed 12–27–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EE–RM–PET–100]

Energy Efficiency Program for Consumer Products: California Energy Commission Petition for Exemption From Federal Preemption of California's Water Conservation Standards for Residential Clothes Washers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Denial of a Petition for Waiver from Federal Preemption.

SUMMARY: The Department of Energy (hereafter ''DOE'') announces its denial, and the reasons therefore, of the California Energy Commission's Petition for Exemption from Federal Preemption of California's Water Conservation Standards for Residential Clothes Washers (hereafter ''California Petition'').

DATES: A request for reconsideration of the denial must be received by DOE not later than January 29, 2007.

ADDRESSES: A request for reconsideration must submitted, identified by docket number EE–RM–PET–100, by one the following methods:

- Mail: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed original paper copy.
- Hand Delivery/Courier: Ms. Brenda Edwards-Jones, U.S. Department of Energy, Building Technologies Program, Room 1J–018, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

Instructions: All submissions received must include the agency name and docket number for this proceeding.

FOR FURTHER INFORMATION CONTACT: Bryan Berringer, 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) 586–0371, or e-mail: *Bryan.Berringer@ee.doe.gov*; or Francine Pinto, Esq., or Chris Calamita, Esq., U.S. Department of Energy, Office of the General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432 or (202) 586–1777, e-mail: *Francine.Pinto@hq.doe.gov* or *Christopher.Calamita@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

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II. Background
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1. Interests Substantially Different in Nature and Magnitude from those Prevailing in the United States Generally
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5. Significant Impact on Manufacturing, Marketing, Distribution, Sale, or Servicing
C. Availability of Product Performance Characteristics and Features
1. Top-Loading Residential Clothes Washers
2. Other Product Classes
V. Denial
VI. Approval of the Office of the Secretary

I. Summary of Today's Action

DOE is denying a petition submitted by the California Energy Commission (CEC) for a waiver from Federal preemption of its residential clothes washer regulation contained in section 1605.2(p)(1) of the California Code of Regulations.[1] DOE is denying the petition for three separate and independent reasons. First, DOE is denying the petition because DOE does not have the statutory authority to prescribe a rule for California that would become effective by January 1, 2007, the first of two compliance dates contained in Title 20, section 1605.2(p)(1) of the California Code of Regulations. Section 327(d)(5)(A) of the Energy Policy and Conservation Act (Pub. L. 94–163, as amended) (EPCA) requires that a final rule prescribed by DOE to grant a petition such as the California Petition must have an effective date at least three years following publication of the final rule. (42 U.S.C. 6297(d)(5)(A)) The California Petition does not comply with the effective date criteria in EPCA, and CEC has not petitioned for an effective date other than that provided in the California regulation. CEC has provided information only in the context of the compliance dates of the California regulation, and has not provided the information necessary for DOE to promulgate a rule with an effective that would be compliant under EPCA, i.e., a rule with an effective date three years following the date of issuance. Therefore, DOE denies the California Petition's waiver request.

Second, CEC has not established by a preponderance of the evidence that the State of California has unusual and compelling water interests, a condition required by EPCA for DOE to grant California a waiver from Federal preemption. (42 U.S.C. 6297(d)(1)(B)) CEC did not provide sufficient support for what CEC alleges to be the costs and benefits of the California regulation presented in the petition. Further, CEC did not provide an appropriate analysis of non-regulatory alternatives for comparison to the California regulation. Without support for the likely costs and benefits associated with the California regulation and an appropriate alternatives analysis, DOE was unable to evaluate if the California regulation is ''preferable or necessary'' as compared to non-regulatory alternatives, which is a required showing in order for DOE to determine that an unusual and compelling water interest exists. (42 U.S.C. 6297(d)(1)(C)(ii)) Therefore, DOE cannot find that the California regulation is preferable or necessary as compared to non-regulatory alternatives, and denies the California Petition's waiver request.

Third and finally, interested parties demonstrated by a preponderance of evidence that the State of California regulation would likely result in the unavailability of a class of residential clothes washers in California. Commenters submitted to DOE information demonstrating that the 2010 water factor (WF) standard would likely result in the unavailability of top-loader residential clothes washers in California. Thus, even if DOE had the authority to ignore or override the first effective date of the California

[1] The Appliance Efficiency Regulations, (California Code of Regulations, Title 20, sections 1601 through 1608) dated January 2006, were adopted by the California Energy Commission on October 19, 2005, and approved by the California Office of Administrative Law on December 30, 2005. The Appliance Efficiency Regulations include standards for both federally-regulated appliances and non-federally-regulated appliances.

regulation (i.e., 2007) and promulgate a rule that complied with the EPCA requirement that the rule not take effect for another three years, the rule would violate EPCA in another way, i.e., it would mandate the 6.0 WF standard in 2010, which would likely result in the unavailability of top-loader residential clothes washers. Therefore, under section 327(d)(4) of EPCA, DOE denies the California Petition's waiver request. (42 U.S.C. 6297(d)(4))

II. Background

A. Energy Conservation Standards Under EPCA

Part B of Title III of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. (42 U.S.C. 6291–6309) Products covered under the program, including residential clothes washers, are listed in section 322(a) of EPCA. (42 U.S.C. 6292(a)) Section 325(g) of EPCA establishes energy conservation standards for residential clothes washers and authorizes DOE to amend these standards. (42 U.S.C. 6295(g))

B. Preemption of State Standards

Generally under the provisions of EPCA, where an energy efficiency standard is effective for a ''covered product'' under EPCA, including a standard for residential clothes washers, a State regulation concerning the energy efficiency, energy use, or water use of that product is preempted and is not effective. (42 U.S.C. 6297(c)) Section 322(a)(7) lists residential clothes washers as a product covered under Part B of Title III of EPCA. (42 U.S.C. 6292(a)(7)) DOE has established energy efficiency standards for residential clothes washers as a covered product under section 325(g)(4)(A), and those standards are currently in effect (10 CFR 430.32(g)). (42 U.S.C. 6295(g)(4)(A)) Therefore, State regulations concerning the water use of residential clothes washers are preempted by the Federal standards. EPCA provides several provisions in which the Federal standards do not preempt State regulation, but for residential clothes washers the only applicable exception from the preemption provision is if a waiver is granted under section 327(d). (42 U.S.C. 6297(c)(2))

1. DOE Energy Conservation Standards for Residential Clothes Washers

The initial Federal efficiency standards prescribed in EPCA, as amended by the National Appliance Energy Conservation Act of 1987 (Pub. L. No. 100–12) (NAECA), required an unheated rinse water option for residential clothes washers manufactured on or after January 1, 1988. (42 U.S.C. 6295(g)) On January 12, 2001, DOE issued a final rule establishing energy efficiency standards for five product classes of residential clothes washers (hereafter referred to as ''the January 2001 final rule''): top-loading compact; top-loading, standard; front-loading; top-loading, semi-automatic; and top-loading, suds-saving. 66 FR 3314.

The January 2001 final rule established minimum energy efficiency standards, set forth in Table II.1, below, to become effective on January 1, 2004, and January 1, 2007. The January 2001 final rule constituted the second residential clothes washer rulemaking required by EPCA. DOE's standards for residential clothes washers are energy efficiency standards only; DOE has not set a water use requirement for residential clothes washers.[2] (10 CFR 430.32(g))

TABLE II.1.—FEDERAL RESIDENTIAL CLOTHES WASHER STANDARD LEVELS

Product class	Capacity (ft.^{3})	Modified energy factor (ft.^{3}/ kWh / cycle)	
		Effective date 1/1/2004	Effective date 1/1/2007
Top-Loading, compact	< 1.6	0.65	0.65
Top-Loading, standard	≥ 1.6	1.04	1.26
Front-Loading	—	1.04	1.26
Top-Loading, Semi-automatic	—	Unheated rinse water option	Unheated rinse water option
Suds-saving	—	Unheated rinse water option	Unheated rinse water option

2. Waiver of Preemption

As stated above, Federal energy efficiency standards for residential products generally preempt State laws, regulations and other requirements concerning energy conservation testing, labeling, and efficiency standards. (42 U.S.C. 6297(a)–(c)) Section 327(d) of EPCA sets forth the procedures and provisions for granting waivers from Federal preemption (hereafter ''waiver'') for particular State laws or regulations. (42 U.S.C. 6297(d)) Section 327(d)(1)(A) of EPCA provides that any State or river basin commission with a State regulation regarding energy use, energy efficiency, or water use requirements for products regulated by DOE may petition for a waiver of Federal preemption and seek to apply its own State regulation. (42 U.S.C. 6297(d)(1)(A)) Regulations implementing the statutory provisions regarding petitions for waiver from Federal preemption are codified at 10 CFR part 430 subpart D.

Section 327(d)(1)(B) of EPCA requires a petitioner to establish ''by a preponderance of the evidence'' that its proffered regulation ''is needed to meet unusual and compelling State or local energy or water interests.'' (42 U.S.C. 6297(d)(1)(B)) ''[U]nusual and compelling'' interests are defined as interests which:

(i) Are substantially different in nature or magnitude than those prevailing in the United States generally; and

(ii) Are such that the costs, benefits, burdens, and reliability of energy or water savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy or water savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation.''

(42 U.S.C. 6297(d)(1)(C)(i) and (ii))

The Secretary may not grant a waiver if he finds ''that interested persons have established, by a preponderance of the evidence, that'' the State regulation would ''significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis.'' (42 U.S.C.

[2] The Energy Policy Act of 2005 (Pub. L. 109–58) amended EPCA with new energy efficiency and water conservation standards for commercial clothes washers. These new standards require products manufactured on or after January 1, 2007, to have a modified energy factor of at least 1.26 and a water consumption factor2 of not more than 9.5. (42 U.S.C. 6313(e))

6297(d)(3)) This is the case even if a State has sufficiently demonstrated the existence of ''unusual and compelling interests.''

To evaluate whether the State regulation will create a significant burden, the Secretary must consider ''all relevant factors,'' including the following:

(A) The extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

(B) The extent to which the State regulation will disadvantage smaller manufacturers, distributors, or dealers or lessen competition in the sale of the covered product in the State;

(C) The extent to which the State regulation would cause a burden to manufacturers to redesign and produce the covered product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

(i) In the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

(ii) In the current or projected sales volume of the covered product type (or class) in the State and the United States; and

(D) The extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

(42 U.S.C. 6297(d)(3)(A) through (D))

The Secretary also may not grant a waiver if interested persons have established, by a preponderance of the evidence, that

[T]he State regulation is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding[.]''

(42 U.S.C. 6297(d)(4)) The failure of some classes (or types) to meet these statutory criteria shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types). (*Id.*)

The phrase ''any covered product type (or class) of performance characteristics'' is not clear on its face. (42 U.S.C. 6297(o)(4)) Grammatically, the phrase ''of performance characteristics'' appears to modify the term ''product type'' and the term ''class.'' While that phrase fits with the term ''class,'' it is ambiguous at best when read with the term ''product type.''

DOE interprets section 327(d)(4) consistent with a parallel provision in section 325(o)(4) which reads,

[T]he standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding.

(42 U.S.C. 6295(o)(4)) The similarity of the language regarding ''covered product type (or class) of performance characteristics'' in section 327(d)(4) and section 325(o)(4) indicates that this language should be read consistently between the two sections. Further, the similarity in function between these two sections supports a consistent reading.

Section 325(o) establishes the criteria for prescribing new or amended Federal standards. (42 U.S.C. 6295(o)) In past discussions of section 325(o)(4), DOE has stated that it is prohibited from establishing a standard that the Secretary finds will result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time of the Secretary's finding. 61 FR 36974, 36984 (July 15, 1996).

Section 327(d) establishes the criteria for prescribing a rule that grants a waiver from preemption for a State regulation. Section 327(d)(4) prohibits DOE from prescribing such a rule if the rule would impact the availability of covered products. Concern with the impact of an efficiency standard on product availability is equally applicable for a State standard for which a waiver from preemption is requested, as it is with a Federal standard. Therefore, DOE sees no need or reason to interpret the ''covered product type (or class) of performance characteristics'' language differently in section 327(d)(4) than in section 325(o)(4).

Furthermore, this interpretation of 327(d)(4) is consistent with the balance Congress apparently meant to strike between more stringent efficiency standards and consumer product choice. The Senate report accompanying NAECA states that DOE shall not ''grant a waiver if interested persons show that the State regulation is likely to result in the unavailability in the State of a product type or of products of a particular performance class, such as frost-free refrigerators.'' (S. Rep. No. 100–6, 100th Cong., 1st Sess. (1987). at 2)

A final reason for choosing this interpretation of section 327(d)(4) is that in response to the notice of receipt of the California Petition and request for comment (71 FR 6022; February 6, 2006) neither California nor any commenter in response to the California petition has suggested that DOE has misconstrued section 327(d)(4).

If a petition for a waiver from Federal preemption is denied, the petitioner may ''request reconsideration within 30 days of denial.'' 10 CFR 430.48. The request must contain a statement of facts and reasons supporting reconsideration. DOE will only reconsider a denial of a petition where it is alleged and demonstrated that the denial was based on an error of law or fact and that evidence of the error is found in the record of proceedings. 10 CFR 430.48(b).

3. Legislative History

The current waiver provisions are, in part, the result of amendments to EPCA under NAECA. In 1987, Congress passed NAECA which amended EPCA's provisions on petitions for waiver from Federal preemption under section 327(d). Under the original provisions, DOE could grant a petition only if it found that there was a ''significant State or local interest to justify such State regulation'' and that ''such State regulation contains a more stringent energy efficiency standard than such Federal standard.'' (S. Rep. No. 100–6, 100th Cong., 1st Sess. (1987). at p. 40) Furthermore, DOE could not prescribe a rule if DOE found that ''the State regulation would unduly burden interstate commerce.'' (*Id.*)

Under the NAECA revisions, the preemption provisions allow States to ''petition DOE to be waived from Federal preemption, but achieving the waiver is difficult.'' (S. Rep. No. 100–6, 100th Cong., 1st Sess. (1987) at p. 2.) In addition, according to the Senate Report, the amended provision ''provides new and more stringent criteria that a State must establish by a preponderance of the evidence in order to receive an exemption.'' (S. Rep. No. 100–6, 100th Cong., 1st Sess. (1987). at p. 9)

For all of the above-mentioned criteria that DOE must consider in evaluating a petition, Congress placed the burden on the petitioner, interested parties supporting the petition, and interested parties opposing the petition, depending on the criteria, to establish facts and to meet the statutory criteria ''by a preponderance of the evidence.'' The California Petition is the first petition for a waiver of Federal preemption submitted under section 327(d) since Congress amended the preemption provisions in 1987.

C. California Petition

California Assembly Bill 1561, passed by the California legislature and signed into law in 2002, required CEC to adopt water efficiency standards for residential clothes washers by January 2004, and to file a petition with DOE for a waiver by April 2004. The California legislation also requires that residential clothes washers ''be at least as water-efficient as commercial clothes washers.'' (California Public Resources Code section 25402(e)) California currently requires that commercial clothes washers meet a maximum water factor (WF) [3] of 9.5 by January 1, 2007, the same standard as prescribed by Section 342 of EPCA. (20 C.C.R. 1605.3(p) and 42 U.S.C. 6313(e)) In 2004, CEC adopted water efficiency standards for top- and front-loading residential clothes washers, setting a two-tier standard of 8.5 WF effective January 1, 2007, and 6.0 WF effective January 1, 2010. (20 C.C.R 1605.2(p)(1)) (CEC, No. 1 at p. 3)

On September 16, 2005, DOE received from CEC a petition dated September 13, 2005, for a waiver from Federal preemption pursuant to the requirements of section 327(d) of EPCA (42 U.S.C. 6297(d)) and 10 CFR part 430, subpart D. However, by letter dated November 18, 2005, DOE notified CEC that its petition had failed to comply with certain requirements set out in 10 CFR 430.42(c).[4] In particular, the original petition had not included the statement required by 10 C.F.R. 430.42(c), on whether ''[to the best knowledge of the petitioner] the same or related issue, act or transaction has been or presently is being considered or investigated by any State agency, department, or instrumentality.'' CEC responded on December 5, 2005, and provided the required information, stating that it was aware of only its petition and the California standard the CEC adopted in 2004. (CEC, No. 2 at p. 2) By letter dated December 23, 2005, DOE notified CEC that it had accepted as complete the California Petition as supplemented.[5]

On February 6, 2006, DOE published a notice of receipt of the California Petition in the **Federal Register** (hereafter referred to as the ''February 2006 notice'') and requested comments on the California Petition. (71 FR 6022) DOE received 78 comments on the California Petition, including more than 50 from California utilities, agencies, districts, water service districts, and cities.

III. Effective Date Requirements of EPCA

Section 327(d)(5)(A) of EPCA requires minimum lead times for any rule prescribed by DOE under the waiver provisions. In general, EPCA requires that,

> [N]o final rule prescribed by the Secretary under [the waiver provisions] may permit any State regulation to become effective with respect to any covered product manufactured within three years after such rule is published in the **Federal Register** or within five years if the Secretary finds that such additional time is necessary due to the substantial burdens of retooling, redesign, or distribution needed to comply with the State regulation.

(42 U.S.C. 6297(d)(5)(A)) EPCA also establishes separate lead time requirements if a State regulation were to become effective prior to the earliest possible effective date for the initial amendment of the energy conservation standard established by the statute. (42 U.S.C. 6297(d)(5)(B)) This separate provision is not applicable to the case at hand, as the earliest possible effective date for the initially amended standard for residential clothes washers was January 1, 1993. (42 U.S.C. 6295(g)(4)(A)) As noted above, the California Petition requests a two-tier regulation with two effective dates: 8.5 WF effective January 1, 2007, and 6.0 WF effective January 1, 2010. (20 C.C.R 1605.2(p)(1)) The requested effective date of 2007 would not allow for the minimum three-year lead time required by EPCA. Further, it is not clear what impact a revised effective date would have on the analyses provided by CEC and interested parties. If the effective dates of the two-tiered standard were each set three years beyond that of the California regulation, or if the first tier were eliminated, the water savings and costs could be different from that presented in the California petition as well as in comments provided by interested parties.

IV. Analysis of the California Petition

A. Necessity of State Regulation To Address Unusual and Compelling State Water Interests

As indicated above, in order for DOE to grant CEC's petition for a waiver from preemption, the State must establish by a preponderance of the evidence that its regulation is needed to meet unusual and compelling water interests. For such interests to exist, California's water interests must, first, be substantially different in nature or magnitude from those prevailing in the U.S. generally, and, second, be such that the State regulation is necessary or preferable to alternative approaches, evaluated in light of several specified factors. (42 U.S.C. 6297(d)(1)(C))

1. Interests Substantially Different in Nature or Magnitude From Those Prevailing in the United States Generally

a. Consideration of ''U.S. generally''.

In the February 2006 notice requesting comments on the California Petition, DOE asked whether it should interpret the phrase ''in the United States generally'' to include a comparison to both regional and national averages. 71 FR 6025. DOE received several comments on this issue, with differing opinions on whether simply a national comparison or also regional and local comparisons were appropriate.

In its comments, the San Diego County Water Authority (SDCWA) and CEC (in its rebuttal comment) asserted that DOE should not use regional comparisons to assess whether California's water interests are substantially different. The SDCWA commented that ''if Congress had intended for regional comparisons to apply, it would have stated this in [EPCA].'' (SDCWA, No. 29 at p. 3) CEC emphasized that section 327(d)(1)(C)(i) of EPCA refers to ''the United States generally.'' (42 U.S.C. 6297(d)(1)(C)(i)) CEC also challenged the relevancy of a comparison to individual States or cities and asserted that examining California's interests in the context of regions does not negate the unique water and energy costs experienced by the State of California. (CEC, No. 79 at pp. 3–4)

The National Electrical Manufacturers Association (NEMA) commented that it believes DOE should consider water use issues faced by other States on an individual basis or regions of the United States. Further, NEMA asserted that a comparison to other States on an individual basis and regions would help DOE to assess how unusual and compelling California's water interests are and the potential for the proliferation of State standards. (NEMA, No. 36, at p. 4)

The Gas Appliance Manufacturers Association (GAMA) and the Association of Home Appliance Manufacturers (AHAM) commented that a decision by DOE to grant the California standards could result in a

[3] According to the California Code of Regulations (CCR); ''Water factor'' means the quotient of the total weighted per-cycle water consumption divided by the capacity of the clothes washer, determined using the applicable test method *** which is the same test method as prescribed by DOE (i.e., 10 CFR Part, 430 Subpart B, Appendix J1 for residential clothes washers). (20 C.C.R. 1602(p) and 1604(p))

[4] Faulkner, D.L. Letter to Jonathan Blees. November 18, 2005.

[5] Faulkner, D.L. Letter to Jonathan Blees. December 23, 2005.

proliferation of State waiver requests, if other States have similar situations to California's. In its comment, GAMA questioned whether California's water concerns are so substantially different in nature or magnitude from those of many other States. (GAMA, No. 38 at p. 2) In addition, AHAM argued that California's situation is similar to that in other regions, including other western States, and could thus result in a proliferation of State standards. (AHAM, No. 52 at p. 50)

DOE interprets the term ''U.S. generally'' in section 327(d)(1)(C)(i) of EPCA as necessitating a comparison of a State's interests to national averages. The Webster's II, New Riverside University Dictionary (1994) defines ''generally'' as ''widely,'' ''usually,'' and ''in disregard of particular instances, and details.'' The Random House College Dictionary (1980) defines ''generally'' as ''with respect to the larger part,'' ''usually, commonly,'' and ''without reference to or disregarding particular * * * situations * * * which may be an exception.'' Based on the dictionary definition and plain meaning of ''generally,'' an evaluation of whether a State's interest is substantially different in nature or in magnitude calls for a comparison of the State's interests to the U.S. as a whole, instead of a comparison with discrete regions or specific States.

Further, comparison of a State's interests to national averages is reasonable given the purpose of a waiver from preemption provisions in EPCA. The waiver of Federal preemption provisions provide for the establishment, in limited instances, of a State standard that is more stringent than a Federal, i.e., national standard. Essentially, the State must demonstrate that its energy or water interests are not adequately addressed by the Federal standard.

Federal efficiency standards address, in part, the need for national energy conservation. (42. U.S.C. 6295(o)(2)(B)(i)(VI)) Consideration of the need for national energy conservation requires DOE to analyze the interests of the Nation as a whole. DOE believes that in order for a State to demonstrate the State's need for a waiver, the State must demonstrate that State or local energy or water interests are substantially different in nature or magnitude than the national energy or water interests considered by DOE in establishing the Federal standard. Therefore, a State's interests must be compared to national averages, as opposed to regional averages or averages specific to sister States.

While under the terms of EPCA the potential proliferation of State standards is an issue that DOE must consider, this issue is better addressed when conducting the necessary analysis of costs and burdens, not when considering the nature and magnitude of a State's water interests. When analyzing the costs and burdens, DOE must consider:

> The extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

(42 U.S.C. 6297(d)(3)(D)) Additionally, if DOE were to grant a request for a waiver from Federal preemption, DOE believes that the potential burden from multiple State standards could be addressed, in part, through responses to individual waiver petitions.

b. Substantially different in nature or magnitude—analysis of California's water interests.

In its petition and its rebuttal to comments, CEC stated that California's water interests are substantially different in both nature and magnitude from those prevailing in the United States generally. (CEC, No. 1 at p. 5; CEC, No. 79 at p. 4) Several interested parties provided statements in support of CEC on this point. (CUWCC, No. 61 at p. 3; SDCWA, No. 29 at p. 4)

CEC asserted that California's water interests are substantially different in nature than those prevailing in the U.S. generally. CEC stated that its water supplies are limited, noting that existing reservoirs are being drawn down in the face of drought, streams and groundwater supplies face overdraft, and under the terms of the Colorado River Agreement California will be able to draw less water from the Colorado River. (CEC, No. 1 at p. 11) CEC also stated that California has higher water rates than the U.S. in general, stating that a thousand gallons of water saved in California is valued on average at $3.15, compared to a national average of $2.88. (CEC, No. 1 at pp. 13)

CEC stated that California's water distribution has one of the highest associated energy costs in the nation, and cited a report stating that California's water systems are uniquely energy intensive due to the pumping requirements for the major conveyance systems. (CEC, No. 1 at p. 14) CEC stated that associated energy values (e.g., the energy required to transport water) average 8.4 KWh per 1,000 gallons in Southern California and can be as high as 11 kWh per 1,000 gallons in California for marginal water supplies. CEC did not provide national averages for the associated energy, generally. However, CEC stated that the average rural household well in the U.S. requires 2.61 kWh per 1,000 gallons of delivered water, whereas California estimates range from 4.1 kWh to 6 kWh per 1,000 gallons. (CEC, No. 1 at pp. 14–15)

Additionally, CEC asserted in its petition that the magnitude of California's water use is substantially different than that prevailing in the U.S. generally. CEC stated that California's total (fresh and saline) withdrawals exceed that of all other States at 51 billion gallons per year. CEC cited U.S. Geological Survey Circular 1268, ''Estimated Use of Water in the United States in 2000-Table 2,'' (revised February 2005), which estimates the average State withdrawal at 8.1 billion gallons per year. (CEC, No. 1 at pp. 5–6) CEC also stated that its projected population growth through 2025 is expected to be above the national median. (CEC, No. 1, at p. 6) CEC stated that U.S. Bureau of Census figures estimate the median growth rate for all States to be 20 percent through 2025. (Id.) Relying again on U.S. Bureau of Census figures, CEC stated that California's population is expected to increase by approximately 36 percent through 2025; increase from the current population of 36 million to 49 million in 2025. (Id.)

CEC indicated that in addition to the water demands generated by its increasing population, the State's agricultural economy requires more water than compared to the U.S. generally. CEC stated that California has the highest amount of irrigated farm land of any State in the country—8.7 million acres, and that California has the largest proportion of irrigated farm land to total farm land (32 percent) in the country. (CEC, No. 1 at p. 7)

While CEC presented information indicating that its water supplies are becoming limited and that the State faces high energy costs associated with water distribution, most of this information was not placed in the context of supply and costs on a national level. It may well be as CEC asserts that California is facing a drought and that reservoirs are being overdrawn, and that under the Colorado River Agreement California is required to decrease the amount of water it draws from the river. However, CEC failed to provide DOE with a comparison of California's supply problems to the Nation in general. Without such information, DOE is unable to determine if the nature of California's interests is different than the Nation in general. If the Nation on average, or substantial

portions thereof, was facing a drought and water supplies were being overdrawn, California's interests would not be substantially different than the U.S. generally. Similarly, neither CEC nor comments supporting its petition, provided information regarding energy costs associated with water distribution on the national level. CEC did provide a comparison of energy costs for water drawn from rural wells, but this limited comparison was not sufficient to meet the ''preponderance of evidence'' burden established by EPCA. The water interests CEC is seeking to address through the proposed California regulation are much broader than those related to water demand from rural wells; i.e., the proposed California regulation would impact all consumers of residential clothes washers, not just those that rely on rural wells.

With regard to the magnitude, DOE has determined that the California Petition demonstrated by a preponderance of the evidence that California's water interests are substantially different in magnitude from those faced by the U.S. generally. In analyzing the magnitude, as well as the nature, of a State's energy or water interests, DOE does not rely on any single factor in making a determination, but instead balances all of the relevant information presented.

CEC presented evidence that the volumetric total demand for water in California is substantially greater than that of other States in the U.S. in general. As evidenced by data submitted by CEC, California's water withdrawal is over six times that of the national per-State average, 51 billions gallons per year as compared to 8.1 billion gallons per year. (CEC, No. 1 at pp. 5–6) The California Petition also indicated that water demand would likely increase as a result of population growth which is above the national median. (CEC, No. 1 at p. 6)

Volumetric total demand in and of itself does not demonstrate a substantial difference in magnitude for the purpose of EPCA, but the total demand considered in conjunction with the likely increase in demand that will accompany California's projected population growth and the value of water saved demonstrates by a preponderance of the evidence that California's water interests are substantially different in magnitude than in the U.S. generally. If DOE were to consider only a State's total water demand in determining whether a State's water interests were substantially different in magnitude, more populous States would likely be able to demonstrate that their interests are substantially different in magnitude from the U.S. generally simply due to the fact that the State's population is greater than the average State population. This would be contrary to the general intent of the waiver provision, which is that it establishes a high bar for granting a waiver request. (See S. Rep. No. 100–6, 100th Cong., 1st Sess. (1987). at p. 2)

CEC has demonstrated by a preponderance of the evidence that California's water interests are substantially different in magnitude from the U.S. generally by demonstrating that it has a volumetric total demand far greater than the national average—by far the largest demand in the Nation—and this demand is accompanied by a projected population increase that is above the median growth rate for all States, and an average value of water saved in California that is greater than the national average value of water saved. As stated above, CEC reported that California has higher water rates than the U.S. in general, an average of $ 3.15 per thousand gallons of water saved in California versus a national average of $2.88 per thousand gallons of water saved. (CEC, No. 1 at pp. 13)

Conversely, the California Petition asserted that California's per capita water use (for all uses) is relatively low (CEC, No. 1 at p. 5) and according to the CUWCC, California consumers use less indoor water per capita than many other States. (CUWCC, No. 61 at p. 3) The per capita demand for water by the California residential sector would indicate that California's demand is not substantially different in magnitude from the U.S. in general, on a per capita basis.

While per capita demand may be low in comparison to the national average, this fact alone is too narrow a basis to reject CEC's assertion that California's water interest is greater in magnitude than that of the U.S. generally. As stated above, DOE balances all of the factors presented by the petitioner and comments provided by interested parties in support of the petition. A per capita demand in California that was substantially higher than the average per capita demand for the U.S. generally would support a substantial difference in magnitude. However, a per capita demand in California that is lower than the national average per capita demand does not negate the fact that California faces a higher than average total volumetric demand, a projected population increase that is higher than generally projected for all of the States, and higher than average water rates.

DOE based its determination on the full spectrum of information provided by CEC and various interested parties. As stated above, on balance with all of the water demand information provided, DOE has determined that the California Petition has shown by a preponderance of the evidence that the magnitude of California's water interest is substantially different from the U.S. generally. The data regarding California's greater than average volumetric total demand, the likely increase in demand that will accompany a projected population growth that is higher than the median for all States, and the greater than average value of water saved (per thousand gallons of water) demonstrate by a preponderance of the evidence that California's water interests are substantially different in magnitude from the U.S. generally.

The Air-Conditioning and Refrigeration Institute (ARI) asserted that the Senate provided direction on the meaning of ''substantial'' in the phrase ''substantially different in nature or magnitude than those prevailing in the United States generally'' in the 1987 Senate Report on NAECA. In particular, ARI cites the Senate's reference to a ''3 to 10 year 'lock-in' period for the Federal standards except if the State can show that an 'energy emergency condition' exists within the State[.]'' (S. Rep. No. 100–6, 100th Cong., 1st Sess. (1987) at p. 2) (ARI, No. 35 at pp. 2–3)

DOE does not agree with the assertion that a State must demonstrate that an emergency exists in order for DOE to find that a State's interests are substantially different in nature or magnitude from the U.S. generally. Section 327(d)(5)(B)(i) explicitly requires a showing of an emergency condition if DOE were to prescribe by final rule that a State regulation is to become effective prior to the earliest possible effective date of a Federal standard. (42 U.S.C. 6297(d)(5)(B)(i)) The statute establishes no such requirement for determining whether a State's water interests are ''unusual and compelling.'' DOE declines to read into section 327 an additional requirement, i.e., the existence of an emergency as an element of the ''unusual and compelling'' provision—that does not appear in the text.

2. Costs, Benefits, and Burdens of the State Regulation as Compared to Alternative Measures

In addition to demonstrating that the nature or magnitude of a State's interests are different from those in the U.S. generally, CEC must also demonstrate by a preponderance of the evidence that the costs, benefits,

burdens, and reliability of the water savings resulting from its regulation make such regulation preferable or necessary when measured against alternative approaches. (42 U.S.C. 6297(d)(1)(C)(ii)) If the petitioner fails to make such a showing, DOE cannot determine that California's water interests are ''unusual and compelling.'' In the present instance, CEC and commenters supporting the California Petition failed to satisfy their burden of providing sufficient information to allow DOE to make such a determination.

a. Cost benefit analysis.

CEC estimated the energy, water, and dollar savings of the California regulation for individual consumers and for the State, and summarized these savings and a simple payback period [6] calculation in the California Petition. (CEC, No. 1 at pp. 19–26 and 36) Savings estimates presented by CEC were both annual and cumulative and calculated per standard level. CEC presented its individual consumer savings estimate as annual and as cumulative over what CEC estimated was the average lifetime of a residential clothes washer. CEC presented annual statewide estimates in the regulation's first-year and once the entire stock of products had become compliant. (CEC, No. 1 at pp. 21–24) CEC also presented a cumulative statewide savings estimate for products operated between 2010 and 2054. (CEC, No. 1 at p. 36) The simple payback period presented by CEC considered the payback to an individual consumer from the California regulation as a whole.

While CEC provided its estimates of the costs and benefits associated with the California regulation, it did not provide a sufficient explanation of the analysis supporting its estimates. CEC stated that the ''the economic assumptions and data inputs used in this analysis were vigorously tested in the Commission's public rulemaking process that led to the adoption of this standard.'' (CEC, No. 1 at p. 19) However, CEC did not indicate where its rulemaking record could be located and where within the record the relevant assumptions, data, and analysis could be located; nor did CEC submit any of that information to DOE. Further, CEC did not provide sufficient explanation of the underlying assumptions and data in its petition. For example, CEC states that ''perhaps the most important driver of the economic analysis is the estimate of the increased first cost of washing machines that would result from the standards.'' (CEC, No. 1 at pp. 19–20) However, CEC did not provide a sufficient explanation of how it derived its estimates of incremental first costs; in fact, CEC did not even attempt to do so. CEC simply presented its estimates of incremental first costs, by standard level, and asserted that they were consistent with (though different than) DOE's incremental first cost estimate for its 2000 rulemaking. (CEC, No. 1 at p. 20) Without the underlying analysis of CEC's assumptions and data inputs, DOE is unable to determine whether the cost and benefit estimates provided are reasonable, and is unable to determine that the California Petition meets EPCA requirements.

b. Analysis of alternatives.

CEC discussed several alternatives to the State regulation in the California petition—specifically, rebates, other non-regulatory programs, and ''reasonably predictable market-induced improvements in efficiency.'' CEC estimated the cost to utilities and consumers of achieving water savings through rebates for highly efficient residential clothes washers and asserted that rebates would be much more expensive for utilities and consumers than regulations. (CEC, No. 1 at pp. 27–32) In particular, CEC estimated participation rates and the cost of providing rebates and purchasing compliant products to develop weighted average costs per eligible washer for the utilities and the consumer. CEC then compared this estimate to its estimate of the increased cost of residential clothes washers under the California standard. (CEC, No. 1 at pp. 30–31) Finally, CEC concluded that rebate and educational programs would be much more expensive for utilities and consumers than standards and that such savings would not persist after the rebates terminated. (CEC, No. 1 at p. 32)

With regard to other non-regulatory programs, CEC cited DOE's 2000 analysis of alternatives to DOE's own energy efficiency standards for residential clothes washers as an approximate assessment of the cost of the proposed State standards versus alternatives. (CEC, No. 1 at pp. 32–34) DOE's 2000 analysis reviewed enhanced public education and information, six-year financial incentives (including tax credits to consumers and manufacturers, consumer rebates and subsidies), voluntary efficiency targets, mass government purchases, early replacement programs, and performance standards. (DOE, ''Regulatory Impact Analysis for Proposed Energy Conservation Standards for Residential Clothes Washers,'' September 2000) From this, CEC concluded that there is no ''close alternative'' to the California standards for ''cost-effectively acquiring water savings and ensuring that the savings are persistent over time.'' (CEC, No. 1 at p. 34)

CEC discussed the potential impact of other non-regulatory programs on the market penetration of residential clothes washers with higher water efficiency, as compared to the current market. However, CEC's reliance on DOE's 2000 analysis to address the costs and benefits of non-regulatory programs is inappropriate, and does not satisfy CEC's burden of demonstrating by a preponderance of the evidence that the costs, benefits, burdens and reliability of water savings resulting from the State regulation would make such regulation preferable or necessary when measured against alternative approaches. (42 U.S.C. 6297(d)(1)(C)(ii)) The cost and benefit estimates provided in the DOE analysis are national estimates (CEC, No. 1 at p. 33) and do not consider the costs and benefits of alternative California-based programs; the estimates certainly do not evaluate the standards being advocated in the California Petition. For example, CEC provided estimated water savings, energy savings and the net present value for a national voluntary efficiency target. (CEC, No. 1 at p. 33) CEC made no assertion, or demonstration, concerning whether the estimate of water savings, energy savings and the net present value would be comparable if voluntary efficiency targets were set by California. In addition, we note that the voluntary consensus alternative presented by CEC was for a voluntary energy efficiency target, rather than a voluntary water use reduction target.

Comparison of the costs and benefits of the California regulation to non-regulatory alternatives available to California requires estimates of the costs and benefits of those alternatives as implemented by California. While the analysis of the nature and magnitude of California's water interests are in the context of the nation in general, the analysis of the costs and benefits of alternatives must be in the context of the ''products subject to the State regulation.'' (42 U.S.C. 6297(d)(1)(C)(ii)) As such, the costs and benefits presented in the DOE analysis cited by CEC do not allow for a comparison of the costs and benefits of alternatives in California.

Interested parties provided additional information on water saving strategies also being pursued within California.

[6] Payback period is the length in time it would take the purchaser of the appliance to recoup the increase in sales price through annual savings in operating costs. In the case of clothes washers, the operating cost savings include the savings in both energy consumption and water consumption.

For example, CUWCC listed some of the water saving strategies its members have implemented, and cited their total savings and expenditures. (CUWCC, No. 61 at pp. 1–3) Also, SDCWA cited a variety of strategies to increase supply and limit demand. SDCWA also noted a range of costs in $/acre-foot for various supply sources it uses and estimates the cost it pays in $/acre-foot for conservation measures it uses (SDCWA, No. 29 at pp. 4–5) However, the information provided was not specific to the product ''subject to the State regulation'' (42 U.S.C. 6297(d)(1)(C)(ii)); *i.e.*, residential clothes washers. As stated above, EPCA requires that the consideration of alternatives be specific to the product (or products) subject to the State regulation. Comments from other interested parties in support of the petition did not provide enough detail for DOE to assess the relative benefits and costs of alternative approaches to the proposed California regulation for residential clothes washers.

3. Unusual and Compelling State Water Interests

CEC, and the comments supporting its petition, have failed to establish by a preponderance of the evidence that California has an ''unusual and compelling'' water interest, within the meaning of that term as defined by EPCA. As stated above, CEC has established that the magnitude of California's water interest is substantially different than that prevailing in the U.S. generally. However, CEC and other commenters supporting the California Petition have failed to establish that the State regulation proposed in the California Petition is necessary or preferable as compared to other alternatives.

EPCA places the burden on CEC of demonstrating by a preponderance of the evidence that the costs and benefits of its proposed standard make the standard preferable or necessary when compared to alternatives. (42 U.S.C. 6297(d)(1)(C)(ii)) CEC did not provide data and several of the assumptions underlying its cost and benefit estimates associated with the California regulation. CEC did not provide an evaluation of the costs and benefits of other non-regulatory programs, beyond rebates (*e.g.*, voluntary efficiency targets, mass government purchases, early replacement programs), in California. Without the ability to review and analyze the assumptions, analysis, and data underlying CEC's cost and benefit estimates and without information on the potential costs and benefits of non-regulatory programs in California, beyond rebates, DOE is unable to conclude that the California regulation is necessary or is preferable to these alternatives.

By not demonstrating the necessity or preference of the proposed State regulatory action as opposed to other possible alternatives, CEC has failed to demonstrate by a preponderance of the evidence that the State regulation is necessary or preferable to alternatives, and therefore has failed to meet the EPCA requirement that it demonstrate that California's water interests are ''unusual and compelling.'' DOE has not evaluated whether CEC has met the EPCA requirement of establishing that the proposed State regulation is ''needed'' to address an unusual and compelling State interest. DOE has no occasion to consider the ''need'' issue because the existence of ''unusual and compelling interests'' has not been established.

B. Impacts of California's Standards on Manufacturing, Marketing, Distribution, Sale or Servicing

As indicated above, under section 327(d)(3) of EPCA DOE is prohibited by law from granting the California Petition if interested parties establish by a preponderance of the evidence that the California regulation will significantly burden the manufacturing, marketing, distribution, sale or servicing of residential clothes washers on a national basis. (42 U.S.C. 6297(d)(3)) In considering this prohibition, EPCA requires DOE to consider ''all relevant factors'' including the extent to which the State regulation will:

(1) Increase manufacturing or distribution costs;

(2) Disadvantage smaller manufacturers, distributors or dealers, or lessen competition;

(3) Cause a burden on manufacturers to redesign and produce the product covered by the State regulation; and

(4) likely contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

(42 U.S.C. 6297(d)(3)(A)-(D)) As discussed below, DOE has not made a determination as to whether the California regulation would significantly burden the manufacturing, marketing, distribution, sale or servicing of residential clothes washers on a national basis.

1. Manufacturing and Distribution Costs

DOE received comments from manufacturers stating that the burden of the proposed California regulation on manufacturing would be such that the manufacturers would be required to remove several of their current product offerings from the California market (ALS, No. 50 at p. 1; F&PA, No. 30 at p. 2; GE, No. 55 at pp. 3 and 7; Maytag, No. 53 at p. 3; and Whirlpool, No. 17 at pp.2) Some manufacturers claimed that this would reduce their presence in the California market (ALS, No. 50 at p. 1; and GE, No. 55 at pp. 3–4) or result in their exit from it. (ALS, No. 50 at p. 1). (Section IV.B.2. further evaluates such comments) Most manufacturers commented that this would limit their ability to recoup prior investments. (F&PA, No. 30 at p. 2; GE, No. 55 at p. 7; Maytag, No. 53 at p. 3; and Whirlpool, No. 17 at p.3) Maytag stated that the California regulation would increase distribution complexity and costs because products that would not comply with the California regulation would still be shipped to distribution centers in California that service other West Coast States. (Whirlpool, No. 17 at p. 3) Comments from individual manufacturers on the impact to manufacturing and distribution were presented in general terms and did not provide specific estimates of the cost burden resulting from the potential elimination of products from the California market.

To demonstrate the industry-wide financial impacts of attempting to meet the California regulation, AHAM modeled industry cash flows with the Government Regulatory Impact Model (GRIM), a tool used in several of DOE's energy conservation rulemaking analyses. AHAM commented that manufacturers could divert shipments or invest in new capacity to meet the 8.5 WF. To meet the 6.0 WF standard AHAM stated that it believes its member companies would have to invest in new manufacturing capacity. (AHAM, No. 52 at pp. 34 and 40) According to AHAM, if manufacturers invested in new manufacturing capacity to meet the standard, the proposed California regulation would necessitate $150 million of additional manufacturer investment. (AHAM, No. 52 at p. 38)

AHAM's GRIM analysis modeled the effect of capital investments to meet the 8.5 WF level in 2007 and the 6.0 WF level in 2010. According to AHAM's GRIM analysis, the proposed California regulations would result in a decline in industry value [7] of $100 to $641 million

[7] Industry value refers to the net present value of cash flows for the industry due to manufacturers' sale of products in the U.S. market. DOE uses change in industry value as a metric for measuring the potential impacts of an energy efficiency standard on manufacturers. See, for example, ''Final Rule Technical Support Document (TSD): Energy Efficiency Standards for Consumer Products: Clothes Washers'', Manufacturer Impact Analysis, Chapter 11, December 2000).

dollars, depending on assumptions regarding gross margins. According to AHAM estimates, these numbers reflect 16 to 103 percent share of total industry value, respectively. (AHAM, No. 52 at p. 39) In addition, AHAM commented that additional costs would be required for spending on ''engineering, product development, product introduction and marketing to support the introduction of new models for California consumers.'' (AHAM, No. 52 at p. 38)

AHAM's methodology of using GRIM to assess the magnitude of manufacturer impacts resulting from the California regulation is a useful tool for DOE to evaluate the California petition. However, DOE notes that the results from GRIM are very sensitive to three cost elements factored into the model: conversion capital expenditures, product conversion expenses, and variable production costs. Given the importance of these data inputs to the model DOE must evaluate the reasonableness of these estimates before it can draw conclusions about the significance of the results projected by GRIM. AHAM did not provide sufficient substantiation of the values it assigned these cost inputs for DOE to evaluate appropriately the model's results.

AHAM provided aggregated figures of $150 million for conversion capital expenditures (AHAM, No. 52 at p. 38) and $105 million for product conversion expenses (AHAM, No. 52 at pp. 46 and 48). According to AHAM's presentation of its analysis, it appears that conversion capital expenditures represent the capital needed for three manufacturers to prepare a total production capacity of 1.5 million residential clothes washers per year. (AHAM, No. 52 at pp. 46 and 48) AHAM did not provide a basis for the total production capacity value. In fact, the value relied on by AHAM , according to AHAM's own projected shipment numbers, appears to exceed the expected annual demand of the California market. (AHAM, No. 52 at pp. 44–45) Moreover, AHAM's comment would have benefited from including separate estimates for manufacturing equipment, tooling, and buildings and a quantification and description of the stranded assets; information that could support the conversion capital costs projected by AHAM. Justification of the estimates along with references to source data, where appropriate, would also have been useful.

Similarly, for product conversion costs DOE would have benefited from disaggregated estimates and descriptions of engineering, product development, product introduction, and marketing costs. Additionally, AHAM was not clear as to whether current products which meet the California regulation would need to undergo substantial redesign, and if so why that would be required.

Estimates of the incremental variable product costs are also a major element contributing to the magnitude and uncertainty of GRIM results. AHAM and CEC have vastly different estimates for the incremental consumer prices of lower water factor residential clothes washers. In its GRIM analysis AHAM calculated Costs of Goods Sold (COGS) as a percentage of estimated future residential clothes washer prices. (AHAM, No. 52 at p. 46) AHAM stated in its comments that ''the basic bill of materials needed to achieve low water usage at acceptable wash and rinse performance adds significant costs that can not be avoided through experience or productivity improvement.'' (AHAM, No. 52 at p. 32) However, AHAM did not present a breakdown of the basic bill of materials that underlies its estimated incremental production costs.

AHAM provided DOE with a detailed model to estimate the cost implications to manufacturers resulting from the California regulation. However, AHAM failed to provide sufficient discussion of the assumptions and inputs employed in the model. Without an understanding of the model's assumptions and inputs DOE is unable to appropriately evaluate the results, and therefore AHAM has failed to demonstrate by a preponderance of the evidence the extent to which the proposed California standard would increase the manufacturing and distribution costs of manufacturers and distributors. (42 U.S.C. 6297(d)(3)(A))

2. Effect on Competition and Smaller Entities

AHAM and several manufacturers commented that the California standards would affect different types of manufacturers differently. In particular, AHAM commented that the engineering, product development, and product introduction costs plus capital conversion investments of introducing a new model will exceed $40–50 million for most manufacturers, regardless of actual production volume.'' (AHAM, No. 52 at p. 41) AHAM also stated that manufacturers with smaller market shares might not be able to support investment in the design and production of residential clothes washers with WF levels capable of meeting the standard. (AHAM, No. 52 at p. 41) AHAM did not provide a basis for its $40–50 million dollar estimate and did not provide a discussion of the level of investment manufacturers with smaller market shares would be unable to support.

ALS commented that production volume lost from the removal of its non-compliant top-loading washers in California would not be fully replaced by the sale of its compliant front-loading washer. It stated that foreign manufacturers with lower manufacturing costs, due to ''lower labor costs and unequal or non-existent employee benefit costs,'' would have a competitive advantage by being able to offer compliant products at a lower cost. (ALS, No. 50 at pp. 2 and 6)

GE claimed that its sales volume would fall because its limited product offerings would not be able to compete with ''larger and specialty marketers.'' (GE, No. 55 at p. 4) Maytag commented that competitors larger than itself would have a better ability to absorb additional costs. (Maytag, No. 53 at p. 3)

AHAM commented that several manufacturers would likely continue to sell in California only if their current products (*i.e.*, those products already in the market place) met the proposed California standard. Furthermore, it stated that it believes that some low-volume manufacturers would likely leave the California market instead of making additional investments in new products. (AHAM, No. 52 at p. 41)

Though they did not specify their market volumes, both GE and ALS commented that they currently have limited product offerings that comply with the proposed California standards and that they believe their market presence in California would be reduced as a result of the California regulation. (GE, No. 55 at pp. 3–4; ALS, No. 50 at pp. 1–2) In particular, GE commented that it ''does not have a large enough marketshare over which to spread the huge costs of investment to develop a more complete line of laundry product offerings[.]'' (GE, No. 55 at p. 4)

Fisher & Paykel Appliance commented that it has experience with developing residential clothes washers to meet water factor criteria in Australia. (F&PA, No. 30 at p. 1) Furthermore, it commented that it currently produces high efficiency washers for a niche market and that the 8.5 WF standard would likely have a small impact on it (though its current product does not meet the 6.0 WF level). (F&PA, No. 30 at p. 2)

Maytag commented that it believes small retailers could be adversely impacted by the California proposed regulations, bearing an uneven burden compared to larger retailers. It commented that the short time-period to the proposed effective dates would ''shock'' smaller retailers'' business

models and ''force them out of business.'' (Maytag, No. 53 at p. 5)

CEC commented that the California regulation would not likely have an adverse affect on small businesses or on sales competition. (CEC, No. 1 at p. 40) In particular, CEC correlated DOE 2001 energy standards with a growth in the types of residential clothes washer technologies and features, and in the number of qualifying models on the market. Furthermore, CEC commented that the number of manufacturers selling in the U.S. has grown in the past five years despite concentration in many business sectors.[8] According to CEC, both the growth in residential clothes washer technologies and the growth in the number of manufacturers selling residential clothes washers in the U.S. indicate that there would be no reason to expect that the California standard would have a negative impact. (CEC, No. 1 at p. 40).

DOE is concerned about the ability of smaller manufacturers to spread their investment costs over lower production volumes. Analysis from DOE's January 2001 final rule indicated that cost structures did vary between small and large manufacturers. 66 FR 3314. In the TSD that accompanied the January 2001 final rule, DOE noted that ''manufacturing large volumes and optimizing production for these levels can create a significant cost advantage. Smaller manufacturers of clothes washers could thus be affected more negatively than other manufacturers by any proposed standard because of their need to spread fixed costs over smaller production volumes.'' (DOE, ''Final Rule Technical Support Document (TSD): Energy Efficiency Standards for Consumer Products: Clothes Washers'', Manufacturer Impact Analysis, pp. 11–53 and 11–54, December 2000)

Manufacturers did not provide cost estimates for redesigning their products to meet the WF levels of the California regulation. Further, manufacturers did not provide analysis of spreading such costs across production volumes. DOE recognizes that smaller manufacturers may have a significantly more difficult time in responding to the WF levels in the California regulation. However, manufacturers did not provide cost data that would allow DOE to determine the extent of this difficulty and its significance to smaller manufacturers, and therefore comments opposed to the California Petition did not adequately demonstrate the extent to which the proposed California regulation would disadvantage smaller manufacturers, distributors, or dealers, or lessen the competition in the sale of residential clothes washers in California. (42 U.S.C. 6297(d)(3)(B))

3. Redesign and Production

In assessing the impacts of a State regulation if a waiver were to be granted, EPCA requires DOE to consider the extent to which the State regulation would cause a burden on manufacturers to redesign and produce the covered product. (42 U.S.C. 6297(d)(3)(C)) While this analysis is similar to the evaluation of the resulting manufacturing and production costs, EPCA directs DOE to specifically consider the extent to which the regulation would result in a reduction—

(i) In the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

(ii) in the current or projected sales volume of the covered product type (or class) in the State and the United States[.]

(42 U.S.C. 6297(d)(3)(C)(i) and (ii)) Evaluation under section 327(d)(3)(C) considers the availability of compliant units by the effective date and any impact on the total number of sales for the covered product. Essentially, DOE must consider whether compliant residential clothes washers would be available by the effective date and whether the California standard would impact the overall sale of residential clothes washers.

AHAM commented that manufacturers could respond to the 8.5 WF by producing redesigned compliant units, shifting production in favor of compliant front-loaders and non-conventional top-loaders, shifting distribution of compliant front-loaders and non-conventional top-loaders to California and away from the general U.S. market, or, presumably, through a combination of these responses. (AHAM, No. 52 at pp. 34 and 40) AHAM stated that for the 8.5 WF level, it is possible that there is sufficient U.S. capacity to meet California demand under the California regulation by largely eliminating shipments of compliant units to other States. (AHAM, No. 52 at p. 34) AHAM also stated, however, that the design of such products is targeted towards specialty customers and is not geared towards the demands of the average consumer; *i.e.*, current unit designs that would comply with the proposed California regulation are typically higher cost models not ''optimized for the vast majority of the market that wishes simple, reliable, low cost washers.'' (AHAM, No. 52 at p. 40)

With regard to demand for residential clothes washers, AHAM stated that due to price elasticity and what it asserted where necessary design changes, shipments to California will decline as consumers choose to repair current washers as opposed to purchasing new, more expensive washers. (AHAM, No. 1 at p. 38) Based on its analysis, AHAM projected that shipments of washers would decline by 10 percent from 2007 through 2009, by 20 percent in 2010 through 2012, and recover between 2013 and 2015. (AHAM, No. 52 at p. 39)

AHAM did not provide a breakdown of the costs associated with shifting production in favor of compliant front-loading and non-conventional top-loading residential clothes washers or redistributing compliant residential clothes washers to California. Further, AHAM did not indicate whether or why such changes to manufacturing and distribution could be accomplished in the lead times provided for under the California regulation. The comments received did not provide specific information indicating whether manufacturers would have difficulty in shifting production and distribution within the lead time provided by the California regulation in order to provide sufficient products for the U.S. market in 2007. Therefore, commenters opposed to the California Petition have not provided sufficient evidence or analysis for DOE to determine the extent to which the proposed California regulation would cause a burden to manufacturers to redesign and produce residential clothes washers that would comply with the proposed California regulation. (42 U.S.C. 6297(d)(3)(C))

4. Proliferation of State Standards

Currently, no other State has petitioned DOE for a waiver of preemption regarding the water efficiency of residential clothes washers. If other States petitioned for a waiver, DOE would consider the extent to which other States chose standards levels identical to those proposed by California, as well as levels proposed by any other States. Furthermore, DOE would consider whether the cumulative impact of similar or differing State standards would burden the manufacturing, marketing and distribution of residential clothes washers nationally. However, DOE did not consider the impact of other State petitions because currently California is

[8] DOE notes, however, that since this proceeding started, Maytag Company has been purchased by the Whirlpool Corporation, further concentrating the clothes washer industry. Based on DOE estimates of data reported in Appliance Magazine, DOE estimates that Whirlpool Corporation accounts for approximately 71 percent of clothes washer sales, GE 17 percent and the remaining 12 percent is spread over the remaining manufacturers, nationally.

the only State to have submitted a petition under section 327 of EPCA.

5. Significant Impact on Manufacturing, Marketing, Distribution, Sale, or Servicing

Interested parties have not demonstrated by a preponderance of the evidence that the California regulation would significantly burden manufacturing, marketing, distribution, sale or servicing of the covered product on a national basis. Interested parties asserted that the California regulation would increase manufacturing and distribution costs, would negatively impact smaller manufacturers, and that the California regulation could result in redistribution of product. As discussed above, however, the interested parties did not provide adequate justification to support these assertions. Manufacturers did not provide detailed cost estimates and AHAM's analysis did not provide justification for its underlying assumptions. Therefore, the interested parties opposed to the California Petition did not satisfy their burden of providing sufficient information to allow DOE to determine that, if the California Petition were granted, the proposed California regulation would significantly burden manufacturing, marketing, distribution, sale or servicing of the residential clothes washers on a national basis. (42 U.S.C. 6297(d)(3))

C. Availability of Product Performance Characteristics and Features

1. Top-Loading Residential Clothes Washers

Under EPCA section 327(d)(4), DOE is prohibited by law from granting California a waiver of preemption if interested persons have demonstrated by a preponderance of the evidence that California's proposed regulation is likely to result in the unavailability in California in any covered product type (or class) with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding. (42 U.S.C. 6297(d)(4))

Manufacturers' comments indicated that the design changes necessary to comply with the 6.0 WF level would eliminate traditional top-loading residential clothes washers from the California market. (AHAM, No. 52 at pp. 1 and 32; ALS, No. 50 at pp. 2 and 6; Whirlpool, No. 17 at p. 1; Maytag, No. 53 at p. 3; GE, No. 55 at p. 3) Maytag stated that traditional top-loading residential clothes washers currently represent at least 60 percent of California's residential clothes washer sales. (Maytag, No. 53 at p. 3) Data submitted by AHAM, including ENERGY STAR data, indicate that only front-loading residential clothes washers currently meet the 6.0 WF level; current models of top-loading residential clothes washers, regardless of design, have a WF level of greater than 6.0. (AHAM, No. 52 at p. 22) In its comments, CEC identified a top-loading, horizontal-axis residential clothes washer as a potential design to meet the 6.0 WF level. (CEC, No. 1 at p. 46; CEC, No. 79 at p. 13) However, the model to which CEC referred (CEC, No. 1 at p. 46) does not currently meet the 6.0 WF level, and would require redesign. Moreover, the residential clothes washer identified by CEC appears to represent a small portion of the market.

A number of stakeholders, including the CUWCC, PG&E, NRDC, Consolidated Smart Systems (CSS) and several California entities commented that the California market currently offers a variety of models that can meet the 8.5 and 6.0 WF levels. (CUWCC, No. 61 at p. 5; NRDC, No. 41 at p. 2; PG&E, No. 44 at pp. 6–7 and 9; CSS, No. 77 at p. 2) DOE is aware that several models of residential clothes washers in the market today can meet the 8.5 WF and 6.0 WF levels. However, DOE also notes that this discussion of the availability of products, generally did not distinguish between front- and top-loading residential clothes washers.

DOE knows of no top-loading residential clothes washers on the market that meet a 6.0 WF. Neither CEC nor any other commenter has asserted or demonstrated that such a product exists. As noted above, several stakeholders commented that, while existing residential clothes washers can currently meet the 6.0 WF level, there is no indication that any of these residential clothes washers are top-loading. For example, according to data on ENERGY STAR products submitted by AHAM, the lowest WF of a top-loading washer currently on the market is approximately 6.3. (AHAM, No. 52 at p. 22; and CEC, No. 1 at p. 46) DOE finds that it has been established by a preponderance of the evidence that there are no top-loading residential clothes washer in the current market that would comply with the 6.0 WF level of the proposed California regulation, and that therefore the proposed California standard would result in the unavailability of top-loading residential clothes washers in the California market. Therefore, even had CEC met its requirements under EPCA, the California Petition should be rejected on this additional ground.

2. Other Product Classes

EPCA states that the failure of some classes (or types) to meet the criterion of the State regulation shall not affect DOE's determination on whether to prescribe a rule for other classes (or types). (42 U.S.C. 6297(d)(4)) As noted above, DOE has established energy efficiency standards for five classes of residential clothes washers, including top-loading residential clothes washers. (10 CFR 430.32(g)) However, the California Petition in its discussion of the impact of the California regulation does not distinguish between classes of residential clothes washers and therefore, the question of whether such levels would be appropriate for individual classes of residential clothes washers is not at issue.

Even if it were, however, DOE would be concerned that differing maximum WF levels established for specific classes of residential clothes washers could have negative consequences for water savings in California. Regulating more efficient residential clothes washers like front-loading residential clothes washers to a 6.0 WF, while allowing a significantly less stringent WF level for top-loader washers, would likely further increase the existing price differential between top- and front-loading washing machines. (AHAM, No. 52 at pp. 32 and 35) The result of this change in price difference could well increase purchases of less water efficient residential clothes washers, and potentially offset the intended benefit from setting a water efficiency standard for certain but not all classes of residential clothes washers. (See, AHAM, No. 52 at pp. 32 and 35)

V. Denial

As discussed above, the California Petition requests a waiver of Federal preemption for a State regulation that establishes effective dates not permitted under EPCA. Therefore, DOE denies the requested waiver.

Second, in order to grant a petition for a waiver from Federal preemption, a State must show by a preponderance of the evidence that its regulation is needed to address unusual and compelling State or local water or energy interests. Such a showing requires that a State demonstrate that its interests are substantially different in nature or magnitude compared to those in the United States generally and that the State standards are ''preferable or necessary'' when compared to alternatives, including market-induced ones. As discussed above, DOE has determined that the California Petition has demonstrated by a preponderance of

the evidence that the State's water interests are substantially different in magnitude from those present in the United States generally. CEC and comments supporting the California Petition, however, failed to provide sufficient information to demonstrate by a preponderance of the evidence that the proposed State standard is preferable or necessary when compared to alternative approaches. Since CEC has established only one of the two elements necessary to show an unusual and compelling State interest, DOE denies the waiver request.

Third and finally, even if CEC had established by a preponderance of the evidence that California's water interests are unusual and compelling, DOE is denying the waiver request because interested parties have established by a preponderance of the evidence that the California regulation would likely result in the unavailability of top-loading residential clothes washers in California. Therefore, DOE is prohibited from prescribing a rule that would grant the California Petition.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice.

Issued in Washington, DC, on December 20, 2006.

Alexander A. Karsner,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. E6–22270 Filed 12–27–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB Review; comment request.

SUMMARY: The EIA has submitted the Oil and Gas Reserves System Surveys to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq). The EIA requests that the EIA–23P, ''Oil and Gas Well Operator List Update Report'' be discontinued, as it is no longer necessary.

DATES: Comments must be filed by January 29, 2007. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Sarah P. Garman, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*Sarah_P._Garman@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Kara Norman. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*kara.norman@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Kara Norman may be contacted by telephone at (202) 287–1902.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–23L, 23S, and 64A, ''Oil and Gas Reserves System Surveys''
2. Energy Information Administration
3. OMB Number 1905–0057
4. Three-year extension
5. Mandatory
6. EIA's Oil and Gas Reserves Systems Surveys collect data used to estimate reserves of crude oil, natural gas, and natural gas liquids, and to determine the status and approximate levels of production. Data are published by EIA and used by public and private analysts. Respondents are operators of oil wells, natural gas wells, and natural gas processing plants.
7. Business or other for-profit
8. 49,120 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

Issued in Washington, DC December 21, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. E6–22266 Filed 12–27–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–239–000]

BG Energy Merchants, LLC; Notice of Issuance of Order

December 19, 2006.

BG Energy Merchants, LLC (BG Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. BG Energy also requested waivers of various Commission regulations. In particular, BG Energy requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by BG Energy.

On December 19, 2006, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approvals of issuances of

securities or assumptions of liability by BG Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 18, 2007.

Absent a request to be heard in opposition by the deadline above, BG Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of BG Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of BG Energy's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22210 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–163]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 19, 2006.

Take notice that on December 15, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Marabou Midstream Services, LP. CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22209 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–156]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 19, 2006.

Take notice that on December 15, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and BP Energy Company. CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22220 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–157]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 19, 2006.

Take notice that on December 15, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and CenterPoint Energy Services, Inc. CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22221 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–158]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 19, 2006.

Take notice that on December 15, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate transaction between CEGT and XTO Energy Company. CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22222 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–159]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 19, 2006.

Take notice that on December 15, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and EOG Resources, Inc. CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22223 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–160]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 19, 2006.

Take notice that on December 15, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Constellation Energy Commodities Group, Inc. CEGT states that it has entered into an amended agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22224 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–161]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 19, 2006.

Take notice that on December 15, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Chevron U.S.A. Inc. CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22225 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–162]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate Filing

December 19, 2006.

Take notice that on December 15, 2006, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval a negotiated rate agreement between CEGT and Enbridge Marketing (U.S.), LP. CEGT states that it has entered into an agreement to provide firm transportation service to this shipper under Rate Schedule FT and requests the Commission accept and approve the transaction under which transportation service will commence upon the ''in-service'' date following completion of certain Line CP facilities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22226 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–31–000]

Dominion Transmission, Inc.; Notice of Application

December 18, 2006.

Take notice that on December 8, 2006, Dominion Transmission, Inc. (DTI), 120 Tredegar Street, Richmond, Virginia 23219, filed in docket CP07–31–000 an application pursuant to section 7 of the Natural Gas Act (NGA), as amended, seeking authority to construct, install, own, operate, and maintain certain facilities located in the States of Virginia, Maryland, West Virginia, Pennsylvania, and New York that comprise the USA Storage Project, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to Matthew R. Bley, Manager, Gas Transmission Certificates, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, or call (804) 819–2877 or fax (804) 819–2064.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments protests and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web (*http://*

www.ferc.gov) site under the ''e-Filing'' link.

Comment Date: January 8, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22205 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–469–012; RP01–22–014 and RP03–177–009]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

December 19, 2006.

Take notice that on December 14, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the pro forma tariff sheets listed in Appendix A of the filing.

East Tennessee states that the purpose of this filing is to submit pro forma tariff sheets that establish an enhanced segmentation program to become effective on October 1, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on January 4, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22213 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–108–000]

El Paso Natural Gas Company; Notice of Request for Waiver

December 19, 2006.

Take notice that on December 13, 2006, El Paso Natural Gas Company (EPNG) tendered for filing a request to the Commission to permit EPNG to waive and/or reduce certain penalties and charges under its tariff for the time period of November 30 through December 3, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time December 29, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22217 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL01–88–006]

Entergy Services, Inc.; Notice of Compliance Filing

December 20, 2006.

Take notice that on December 18, 2006, Entergy Services, Inc. (ESI), as agent on behalf of the Entergy Operating Companies tendered for filing in accordance with the Commission's November 17, 2006 Order, proposed changes to the Entergy System Agreement that were filed on April 10, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 17, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22231 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–274–008]

Kern River Gas Transmission Company; Notice of Compliance Filing

December 19, 2006.

Take notice that on December 18, 2006, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A submitted with the filing.

Kern River states that it has served an electronic notice of this filing on all parties on the official service list compiled by the Secretary in this proceeding. The complete filing can be viewed on Kern River's Web site.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22214 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–33–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Application

December 19, 2006.

Take notice that on December 13, 2006, Kinder Morgan Interstate Gas Transmission LLC (KMIGT), 370 Van Gordon Street, Lakewood, Colorado 80228–8304, filed in Docket No. CP07–33–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon, by removal, the Otis Compressor Station located in Rush County, Kansas, all as more fully set forth in the application.

Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions concerning this request may be directed to Skip George, Manager of Regulatory, Kinder Morgan Interstate Gas Transmission LLC, P.O. Box 281304, Lakewood, Colorado 80228–8304, or call (303) 914–4969.

Specifically, KMIGT proposes to abandon One 660 hp Worthington SLHC–7 compressor unit and one 300 hp Worthington LCE–8 compressor unit, with appurtenances.

KMIGT states that the Otis Compressor Station has not been utilized since 1994 and it is uneconomical for KMIGT to continue to operate this Compressor Station. KMIGT states further that the abandonment would have no material impact on KMIGT's cost of service nor would it result in or cause any interruption, reduction, or termination of the transportation service presently rendered by KMIGT.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right

to seek court review of the Commission's final order.

The Commission strongly encourages filings of comments, protests and interventions electronically via the Internet in lieu of paper. See, 18 CFR385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-filing'' link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: January 8, 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22227 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–110–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

December 19, 2006.

Take notice that on December 15, 2006, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixteenth Revised Sheet No. 11, to become effective January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22219 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–109–000]

Trunkline LNG Company, LLC; Notice of Tariff Filing

December 19, 2006.

Take notice that on December 15, 2006, Trunkline LNG Company, LLC (TLNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the tariff sheets listed on Appendix A, to the filing to become effective January 15, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22218 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–017]

Rockies Express Pipeline LLC; Notice of Compliance Filing andNegotiated Rate

December 19, 2006.

Take notice that on December 15, 2006, Rockies Express Pipeline LLC (Rockies Express) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 15, 2007:

Thirteenth Revised Sheet No. 22
Third Revised Sheet No. 23

Rockies Express states that a copy of this filing has been served upon all parties to this proceeding, Rockies Express's customers, the Colorado Public Utilities Commission and the Wyoming Public Service Commission.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's

regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22215 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings # 1

December 18, 2006.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–20–000.

Applicants: Wayzata California Power Holdings, LLC.

Description: Wayzata California Power Holdings submits a Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/13/2006.

Accession Number: 20061213–5063.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 3, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–3562–004.

Applicants: Calpine Energy Services L.P.

Description: Calpine Energy Services, LP submits revised affidavit of Julie R Solomon and certain revised exhibit sheets in support of the 10/30/06 triennial market analysis.

Filed Date: 12/13/2006.

Accession Number: 20061215–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER03–1316–003.

Applicants: Palama, LLC.

Description: Palama, LLC submits its triennial updated market analysis.

Filed Date: 12/12/2006.

Accession Number: 20061218–0125.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 2, 2007.

Docket Numbers: ER05–6–091; EL04–135–094; EL02–111–111; EL03–212–107.

Applicants: Exelon Corporation.

Description: Exelon Corporation submits a compliance Electric Refund Report pursuant to the Commission's 10/27/06 Order.

Filed Date: 12/13/2006.

Accession Number: 20061213–5060.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 3, 2007.

Docket Numbers: ER06–133–002.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection LLC submits a compliance Electric Refund Report pursuant to the Commission's 11/3/06 Order.

Filed Date: 12/12/2006.

Accession Number: 20061212–5026.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 2, 2007.

Docket Numbers: ER06–451–014.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits Exhibit I and II clean and redlined versions of the correct Substitute Third Revised Sheet 627 et al. to FERC Electric Tariff, Fourth Revised Volume 1.

Filed Date: 12/14/2006.

Accession Number: 20061218–0141.

Comment Date: 5 p.m. Eastern Time on Thursday, January 4, 2007.

Docket Numbers: ER06–826–004.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits its First Revised Sheet 448B to its FERC Electric Tariff, Sixth revised Volume 1.

Filed Date: 12/13/2006.

Accession Number: 20061218–0124.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 3, 2007.

Docket Numbers: ER07–16–001.

Applicants: Pacific Gas and Electric Company.

Description: Pacific Gas and Electric Company submits First Revised Thirteenth Revised Sheet 58 to its FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 12/13/2006.

Accession Number: 20061218–0123.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 3, 2007.

Docket Numbers: ER07–174–002.

Applicants: Osceola Windpower, LLC.

Description: Osceola Windpower, LLC submits an amendment to its Market-Based Tariff effective 1/2/07.

Filed Date: 12/08/2006.

Accession Number: 20061212–0101.

Comment Date: 5 p.m. Eastern Time on Friday, December 29, 2006.

Docket Numbers: ER07–212–001; ER01–1558–004.

Applicants: Wayzata California Power Holdings, LLC; NEO California Power LLC.

Description: Wayzata California Power Holdings, LLC and NEO California Power LLC submit their proposed FERC Electric Rate Schedule 1.

Filed Date: 12/14/2006.

Accession Number: 20061218–0119.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2006.

Docket Numbers: ER07–264–001.

Applicants: MMC Mid-Sun, LLC.

Description: MMC Mid-Sun, LLC submits an errata to the application for market based rates authority.

Filed Date: 12/01/2006.

Accession Number: 20061215–0272.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–281–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits an amended Network Integration Transmission Service Agreement and an amended Interconnection and Network Operating Agreement w/Indianola Municipal Utilities.

Filed Date: 12/01/2006.

Accession Number: 20061205–0022.

Comment Date: 5 p.m. Eastern Time on Friday, December 22, 2006.

Docket Numbers: ER07–318–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation submits an Original Service Agreement 923 with New Athens Generating Company, LLC.

Filed Date: 12/13/2006.

Accession Number: 20061218–0140.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 3, 2007.

Docket Numbers: ER07–319–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits its compliance filing of revisions to its Open Access Transmission Tariff to modify real-time energy imbalance market pursuant to FERC's order issued on 10/31/06, effective 2/1/07.

Filed Date: 12/12/2006.

Accession Number: 20061218–0139.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 2, 2007.

Docket Numbers: ER07–322–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc submits a Facilities Construction Agreement with Constellation Energy Commodities Group, Inc *et al.* Filed Date: 12/14/2006.
Accession Number: 20061218–0145.
Comment Date: 5 p.m. Eastern Time on Thursday, January 4, 2007

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E6–22203 Filed 12–27–06; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 19, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–35–000.
Applicants: Entergy Nuclear FitzPatrick, LLC; Entergy Nuclear Power Marketing, LLC.
Description: Entergy Nuclear Fitzpatrick, LLC and Entergy Nuclear Power Marketing, LLC submits an application for authorization to transfer Power Sales Agreement.
Filed Date: 12/12/2006.
Accession Number: 20061218–0137.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 2, 2007.

Take notice that the Commission received the following electric rate filings

Docket Numbers: ER00–3251–013; ER99–754–015; ER98–1734–013; ER01–1919–010; ER01–1147–004; ER01–513–020; ER99–2404–010
Applicants: Exelon Generating Company, LLC; AmerGen Energy Company, LLC; Commonwealth Edison Company; Exelon Energy Company, LLC; PECO Energy Company; Exelon West Medway, LLC; Exelon Wyman, LLC; Exelon New Boston, LLC; Exelon Framingham, LLC; Exelon New England Power Marketing, L.P.
Description: Exelon Generation Company, LLC et submits a notice of non-material change in status.
Filed Date: 12/15/2006.
Accession Number: 20061218–0088.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER01–205–016; ER98–2640–014; ER98–4590–012; ER99–1610–020; EL05–115–000.
Applicants: Xcel Energy Services Inc.; Northern States Power Company and Northern States Power Company (Wisconsin); Public Service Company of Colorado; Southwestern Public Service Company.
Description: Xcel Energy Services, Inc et al submit a compliance filing in order to incorporate certain revisions into their market-based rate tariffs required by FERC's 11/9/06 Order.
Filed Date: 12/11/2006.
Accession Number: 20061218–0129.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 2, 2007.

Docket Numbers: ER01–1385–015.
Applicants: Consolidated Edison Company of New York.
Description: Ninth Quarterly Report by NYISO regarding its efforts to efficiently utilize combined cycle units in the NYISO markets, under ER04–230, *et al.*
Filed Date: 12/15/2006.
Accession Number: 20061215–5019.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER01–1403–005; ER01–2968–006; ER01–845–005; ER05–1122–003; ER04–366–004; ER04–372–006.
Applicants: FirstEnergy Operating Companies; FirsEnergy Solutions Corp.; FirstEnergy Generation Corporation; FirstEnergy Nuclear Generation Corporation; Jersey Central Power & Light Company; Metropolitan Edison Company.
Description: FirstEnergy Operating Companies et al., submit a non-material change in status of generation capacity.
Filed Date: 12/12/2006.
Accession Number: 20061218–0126.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 2, 2007.

Docket Numbers: ER03–821–003.
Applicants: One Nation Energy Solutions, LLC.
Description: One Nation Energy Solutions, LLC submits a First Revised Original Sheet 1 to its FERC Electric Tariff, Rate Schedule 1st Revised.
Filed Date: 12/15/2006.
Accession Number: 20061218–0086.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER06–451–015.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff, pursuant to the Commission's 11/17/06 order.
Filed Date: 12/15/2006.
Accession Number: 20061218–0085.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER06–1094–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Op, Inc. submits an additional Information and Partial Waiver Withdrawal request.
Filed Date: 12/13/2006.
Accession Number: 20061213–5054.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 26, 2007.

Docket Numbers: ER06–1545–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator Inc submits a compliance filing to confirm that the current version of the North American Electric Reliability Council Transmission Loading Relief are incorporated in Attachment Q, pursuant to the Commission's 11/30/06 order.
Filed Date: 12/13/2006.
Accession Number: 20061218–0138.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 3, 2007.

Docket Numbers: ER07–64–001.
Applicants: ALLETE, Inc.
Description: ALLETE, Inc submits an amendment to its 10/23/06 filing to establish a distribution wheeling rate for Central MN Ethanol Co-op interconnection to MP's distribution Facilities.
Filed Date: 12/12/2006.
Accession Number: 20061218–0127.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 2, 2007.

Docket Numbers: ER07–109–002.
Applicants: BTEC Southaven LLC.
Description: BTEC Southaven LLC submits its Second Substitute Original Sheet 2 to FERC Electric Tariff, Original Volume 1.
Filed Date: 12/15/2006.
Accession Number: 20061218–0149.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER07–110–002.
Applicants: BTEC New Albany LLC.
Description: BTEC New Albany LLC submits its Second Substitute Original Sheet 1 et al to FERC Electric Tariff, Original Volume 1.
Filed Date: 12/15/2006.
Accession Number: 20061218–0150.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER07–300–001.
Applicants: Connecticut Central Energy, LLC.
Description: Connecticut Central Energy, LLC submits Section VII to the petition of initial rate schedule to correct the company's name.
Filed Date: 12/15/2006.
Accession Number: 20061218–0089.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER07–323–000.
Applicants: Dynegy Power Marketing Inc.; Dynegy Midwest Generation, Inc.
Description: Dynegy Power Marketing Inc. et al request waiver of certain provisions of respective market-based tariffs so DYPM can make market-based rate sales, *et al.*
Filed Date: 12/14/2006.
Accession Number: 20061218–0142.
Comment Date: 5 p.m. Eastern Time on Thursday, January 4, 2007.

Docket Numbers: ER07–324–000.
Applicants: Wisconsin Electric Power Company; PJM Interconnection, L.L.C.
Description: Wisconsin Electric Power Co and PJM Interconnection jointly submits a clean rate schedule sheets of the Balancing Authority Operations Coordination Agreement designated as Rate FERC 117 *et al.*
Filed Date: 12/15/2006.
Accession Number: 20061218–0128.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER07–325–000.
Applicants: Allegheny Energy Supply Gleason Generating Facility, LLC.
Description: Allegheny Energy Supply Gleason Generating Facility, LLC submits a notice of cancellation of its market-based rate tariff.
Filed Date: 12/15/2006.
Accession Number: 20061218–0130.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER07–326–000.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits amendments to its Tariff to reflect Order 676 Waivers.
Filed Date: 12/15/2006.
Accession Number: 20061218–0090.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ER07–327–000.
Applicants: Pacific Gas and Electric Company.
Description: Pacific Gas and Electric Company submits revisions to its Transmission Access Charge Balancing Account Rate to its Electric Tariff, Sixth Revised Volume No. 5.
Filed Date: 12/14/2006.
Accession Number: 20061218–0087.
Comment Date: 5 p.m. Eastern Time on Thursday, January 4, 2007.

Docket Numbers: ER07–328–000.
Applicants: Alcoa Power Generating Inc.
Description: Alcoa Power Generating Inc addresses numerous issues concerning its rate schedule currently on file.
Filed Date: 12/15/2006.
Accession Number: 20061218–0148.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES07–11–000.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Wolverine Power Supply Cooperative, Inc submits an application for Authorization of the Assumption of Liabilities pursuant to Section 204(a) of the FPA.
Filed Date: 12/15/2006.
Accession Number: 20061215–5024.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Docket Numbers: ES07–12–000.
Applicants: Consolidated Edison Company of New York.
Description: Consolidated Edison Company of New York submits an application of requesting authorization to Issue and Sale of Short-term Debt pursuant to section 204 of the FPA.
Filed Date: 12/15/2006.
Accession Number: 20061215–5103.
Comment Date: 5 p.m. Eastern Time on Friday, January 5, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

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Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22208 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–433–001]

Northern Natural Gas Company; Supplemental Notice of Intent To Prepare an Environmental Assessment for the Palmyra North Expansion Project Amendment and Request for Comments on Environmental Issues

December 18, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Palmyra North Expansion Project involving construction and operation of new facilities by Northern Natural Gas Company (Northern) in Nebraska, Iowa, Kansas, and South Dakota.[1] On August 29, 2006, Northern filed an application with the FERC, in Docket No. CP06–433–000, for authorization under sections 7(c) and 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for a Certificate of Public Convenience and Necessity (Certificate) to expand the capacity of its Palmyra North Facilities (Palmyra). On December 6, 2006, Northern filed an amendment to their application with the FERC, in Docket No. CP06–433–001, for authorization to include two additional meter stations in Clay and Sioux Counties, Iowa; the subject of this Notice. The EA will encompass all proposed facilities and be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

On September 12, 2006, the FERC issued a Notice of Intent to Prepare an Environmental Assessment for the Proposed Palmyra North Expansion Project and Request for Comments on Environmental Issues (NOI). The NOI was published in the **Federal Register** and was also mailed to 114 interested parties, including Federal, State, and local officials; agency representatives; conservation organizations; Native American groups; local libraries and newspapers; and property owners affected by the proposed facilities. This NOI is requesting comments on the two additional meter stations that Northern has proposed.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Northern provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Northern proposes to expand the capacity of its Palmyra North Facilities in Clay and Sioux Counties, Iowa in order to transport an additional 12,100 dekatherms per day of natural gas in order to meet agricultural and ethanol customer demand and to increase incremental winter peak day service. By this Application Amendment, Northern seeks authority to also:

- Install a new meter station to an existing Northern line at MP 21.9 in Clay County, Iowa; and
- install a new meter station to an existing Northern line at MP 28.3 in Sioux County, Iowa.

Two nonjurisdictional facilities, a new ethanol plant and an ethanol plant expansion, have been proposed in association with the Palmyra North Expansion Project. We have made a preliminary decision to not address the impacts of these facilities. We will briefly describe their location and summarize the status of state and local environmental reviews in the EA.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would impact about 1.8 acres of land. Following construction, approximately 0.4 acre of new land would be maintained for operation. The remaining 1.4 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA, we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Soils.
- Land Use.
- Water Resources and Wetlands.
- Cultural Resources.
- Vegetation and Wildlife.

We will also evaluate possible alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on

[1] The Commission issued a Notice of Application on September 6, 2006 for Northern's August 29, 2006 application. On December 12, 2006, the Commission issued a Notice of Application for Northern's December 6, 2006 amendment.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of OEP/DG2E, Gas Branch 3.
- Reference Docket No. CP06–433–001.
- Mail your comments so that they will be received in Washington, DC on or before January 19, 2007.

We will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project additions. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22207 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: P–12751–000]

AquaEnergy Group, Ltd.; Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, and Terms and Conditions, Recommendations, and Prescriptions

December 18, 2006.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* P–12751–000.

c. *Date Filed:* November 8, 2006.

d. *Applicant:* AquaEnergy Group, Ltd.

e. *Name of Project:* Makah Bay Offshore Wave Energy Pilot Project.

f. *Location:* Pacific Ocean in Makah Bay, Clallam County, Washington near the city of Neah Bay, Washington. The project would occupy about one acre of land on the Makah Indian Reservation and about seven acres of the Olympic Coast National Marine Sanctuary administered by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration and Flattery Rocks National Wildlife Refuge administered by the U.S. Department of the Interior, U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mary Jane Parks, P.O. Box 1276, Mercer Island, WA 98059, (626) 568–0798.

i. *FERC Contact:* Nick Jayjack, (202) 502–6073, *Nicholas.Jayjack@ferc.gov*.

j. *Deadline for filing motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene, protests, comments, terms and conditions, recommendations, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The project would consist of: (1) Four, 250-kilowatt wave energy conversion buoys (''AquaBuOYs'') and an associated mooring/anchoring and electrical connection system placed 3.7 miles offshore in water depths of about 150 feet over a rectangular area about 625 feet by 450 feet of ocean floor; (2) a metal shore station that would be about 15 feet long by 15 feet wide by 10 feet high and located just inland of Hobuck Beach (on the Makah Indian Reservation near Neah Bay, Washington) adjacent to an existing power line for interconnection—the shore station would contain equipment necessary to connect to the electrical grid; (3) a driveway and parking area at the metal shore station; and (4) a 3.7-mile long submarine cable anchored to the ocean floor and connecting from one of the buoy's (''collector buoy'') power cable to the metal shore station. The total installed capacity of the project would be 1 megawatt, and the project would generate about 1,500,000 kilowatt-hours annually. AquaEnergy proposes to provide the power generated by the project to the Clallam County PUD for use in its service area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural schedule:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Notice of the availability of the EA (single EA): May 2007.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22204 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12667–003]

City of Hamilton, OH; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

December 18, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 12667–003.

c. *Date filed:* October 6, 2006.

d. *Applicant:* City of Hamilton, Ohio.

e. *Name of Project:* Meldahl Hydroelectric Project.

f. *Location:* On the Ohio River, near the City of Augusta, Bracken County, Kentucky. The existing dam is owned and operated by the U.S. Army Corps of Engineers (Corps). The project would occupy approximately 81 acres of United States lands administered by the Corps.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Michael Perry, Director of Electric, City of Hamilton, OH, 345 High Street, Hamilton, OH 45011, (513) 785–7229.

i. *FERC Contact:* Peter Leitzke at (202) 502–6059; or e-mail at *peter.leitzke@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The proposed project would utilize the existing U.S. Army Corps of Engineers' Captain Anthony Meldahl Locks and Dam, and would consist of: (1) An intake approach channel; (2) an intake structure, (3) a 248-foot-long by 210-foot-wide powerhouse containing three generating units having a total installed capacity of 105 megawatts, (4) a tailrace channel; (5) a 5-mile-long, 138-kilovolt transmission line; and (6) appurtenant facilities. The City of Hamilton (Hamilton) is a municipal entity that owns and operates an electrical system. The project would have an estimated annual generation of 489 gigawatt-hours, which would be used to serve the needs of the customers of Hamilton's electric system.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support. n. Competing development applications, notices of intent to file such an application, and applications for preliminary permits will not be accepted in response to this notice.

Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule will be made if the Commission determines it necessary to do so:

Action	Tentative date
Scoping Document for comments ..	March 2007
Notice of application is ready for environmental analysis.	June 2007
Notice of the availability of the draft EA.	December 2007
Notice of the availability of the final EA.	June 2008

Magalie R. Salas,

Secretary.

[FR Doc. E6–22206 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 19, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12748–000.

c. *Date filed:* November 1, 2006.

d. *Applicant:* The City of Corpus Christi (City).

e. *Name of Project:* City of Corpus Christi Hydroelectric Project.

f. *Location:* The project would be located at the City's existing Wesley E. Seale Dam, on the Nueces River in Nueces County, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. George ''Skip'' Noe, City Manager, City of Corpus Christi, 1201 Leopard Street, Corpus Christi, TX 78401, (361) 826–3220. Ms. Mary Kay Fischer, City Attorney, City of Corpus Christi, 1201 Leopard Street, Corpus Christi, TX 78401, (361) 826–3360. Ms. Nancy J. Skancke, Law Offices of GKRSE, 1500 K Street, N.W., Suite 330, Washington, DC 20005, (202) 408–5400.

i. *FERC Contact:* Etta Foster, (202) 502–8769.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) the existing 5,970-foot-long, gated, concrete-gravity Wesley E. Seale Dam; (2) an existing impoundment, Lake Corpus Christi, with a surface area of 18,256 acres and a storage capacity of 257,260 acre-feet at normal maximum water surface elevation of 94.0 feet above mean sea level; (3) two 2.5 MW turbine generating units with a total installed capacity of 5 megawatts; (4) an existing 69 kV transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 5.2 gigawatt-hours.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22211 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No.: P–2301–022]

PPL Montana; Notice of Application Tendered for Filing with the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

December 19, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2301–022.

c. *Date Filed:* December 15, 2006.

d. *Applicant:* PPL Montana.

e. *Name of Project:* Mystic Lake Hydroelectric Project.

f. *Location:* The existing project is located on West Rosebud Creek in Stillwater and Carbon Counties, Montana. The project occupies about 674 acres of federal lands in the Custard National Forest managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Jon Jourdonnais, PPL Montana, 45 Basin Creek Road, Butte, MT 59701; Telephone (406) 533–3443; email *jhjourdonnais@pplweb.com.* Additional information on this project is available on the applicant's web site: *http://www.mysticlakeproject.com.*

i. FERC Contact: Steve Hocking, Telephone (202) 502–8753; email *steve.hocking@ferc.gov* Additional information on Federal Energy Regulatory Commission (FERC) hydroelectric projects is available on FERC's web site: *http://www.ferc.gov/industries/hydropower.asp.*

j. This application is not ready for environmental analysis at this time.

k. Project Description: The existing project consists of the following: (1) a 368-foot-long, 45-foot-high, concrete arch dam/spillway; (2) 42-inch high timber flashboards on top of the arch spillway; (3) a 145-foot-long, 15-foot-high concrete core and earthfill dike with 1-foot-high flashboards; (4) Mystic Lake with a storage capacity of 47,000 acre-feet and a surface area of 446.7 acres at its normal maximum surface elevation of 7,673.5 feet above msl; (5) a 33-foot-long, 7-foot-high, by 9-foot-wide concrete intake structure at the left abutment of the dike; (6) a conduit from the intake structure to the powerhouse consisting of a 1,005-foot-long rock tunnel, a 9,012-foot-long, 57-inch steel pipeline with an inverted siphon near the mid-point of the pipeline, a surge tank, and a 2,566-foot-long by 42 to 48-inch diameter steel penstock; (7) a 60-foot-wide by 85-foot-long concrete powerhouse with two turbine-generator units with a total installed capacity of 11.25 megawatts; (8) two concrete tunnels that extend from the powerhouse into West Rosebud Creek; (9) a re-regulation dam about 1.5 miles downstream from the Mystic Lake powerhouse consisting of a 19-foot-high, 420-foot-long earthfill dike with a concrete spillway with flashboards; (10) West Rosebud Lake with a storage capacity of 470 acre-feet and a surface area of 49 acres at its normal maximum surface elevation of 6,397.4 feet above msl; (11) two 5.3-mile-long, 50-kilovolt transmission lines; (12) a 9,363-foot-long distribution line from the powerhouse to the arch dam and a 2,068-foot-long distribution line from the powerhouse to the surge tank; (13) an operator village adjacent to the powerhouse with four homes and three maintenance buildings; and (14) appurtenant facilities.

PPL Montana currently operates the project in both base load and peaking modes depending on water availability, electric demands, and existing license constraints. Typically, from mid-May to mid-August, inflows exceed the project's hydraulic capacity and the project is operated as a base load plant, continuously generating at maximum capacity. During this time, flows above the project's hydraulic capacity are captured in Mystic Lake which is gradually raised about 15 to 20 feet per month until it exceeds the project's current minimum recreation elevation of 7,663.5 feet msl. In most years, Mystic Lake is maintained about ten feet higher than the minimum recreation elevation during July and August.

After Labor Day, PPL Montana begins to slowly draft Mystic Lake, reducing its elevation by an average of 8 to 9 feet per month, until the lake is at or near its lowest elevation of 6,512.0 feet msl by the end of March. Drafting the lake permits PPL Montana to release more water into West Rosebud Creek than otherwise would be available from inflows from August through March. During the fall and early winter, PPL Montana employs limited peaking to maximize generation during high use periods, generally from 8 a.m. to 4 p.m. daily. In general, flow changes caused by peaking do not extend further than the project's re-regulation dam which creates West Rosebud Lake located about one mile downstream of the powerhouse.

l. Locations of the Application: A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Procedural Schedule: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/ Notice of Ready for Environmental Analysis	January 12, 2007[1]
Filing of interventions, recommendations, preliminary terms and conditions, and fishway prescriptions	March 13, 2007
Reply comments due	April 27, 2007
FERC issues single EA (without a draft)	July 11, 2007
Comments on EA due	August 10, 2007
Filing of modified terms and conditions	October 9, 2007
Ready for Commission decision	November 15, 2007

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22212 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 20, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12749–000.

c. *Date Filed:* November 2, 2006.

d. *Applicant:* Oregon Wave Energy Partners, LLC. P≤e. *Name of Project:* Coos Bay OPT Wave Park Project.

f. *Location:* The project would be located in the Pacific Ocean about 2.5 miles off shore in Coos County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contacts:* Charles F. Dunleavy, Oregon Wave Energy Partners, LLC, 1590 Reed Road, Pennington, NJ 08534, phone: (609)-730–0400.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 200 to 400 Power Buoys having a total installed capacity of 100 megawatts, (2) a proposed 13.8 kilovolt transmission line; and (3) appurtenant facilities. The project is estimated to have an annual generation of 306.6 gigawatt-hours per-unit per-year, which would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Competing Preliminary Permit: Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. Competing Development Application: Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. Notice of Intent: A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. Agency Comments: Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22229 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 20, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12750–000.

c. *Date Filed:* November 2, 2006.

d. *Applicant:* Oregon Wave Energy Partners, LLC.

e. *Name of Project:* Newport OPT Wave Park Project.

f. *Location:* The proposed tidal project would be located in the Pacific Ocean about 3 to 6 miles off shore in Lincoln County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:* Charles F. Dunleavy, Oregon Wave Energy Partners, LLC, 1590 Reed Road, Pennington, NJ 08534, phone: (609)-730–0400.

i. *FERC Contact:* Mr. Robert Bell, (202) 502–6062.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12750–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Competing Application: Project No. 12727–000, Date Filed: August 17, 2006, Date Issued: October 11, 2006, Due Date: December 11, 2006.

l. *Description of Project:* The proposed project would consist of: (1) 200 to 400 Power Buoys having a total installed capacity of 100 megawatts, (2) a proposed 13.8 kilovolt transmission line, and (3) appurtenant facilities. The project is estimated to have an annual generation of 306.6 gigawatt-hours per-unit per-year, which would be sold to a local utility.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission(s mailing list should so indicate by writing to the Secretary of the Commission.

o. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents: Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

r. Agency Comments: Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22230 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2301–022]

PPL Montana; Notice of Teleconference to Discuss Additional Information Needs for the Mystic Lake Hydroelectric Project

December 20, 2006.

a. *Date and Time of Teleconference:* January 8, 2007; 9 a.m. MST (11 a.m. EST).

b. *Teleconference Call:* Call-in procedures and an agenda will be posted to the Commission's Web site soon at: *http://www.ferc.gov/EventCalendar/EventsList.aspx?Date=1/6/2007&CalendarID=0.*

c. *FERC Contact:* Steve Hocking at (202) 502–8753 or *steve.hocking@ferc.gov.*

d. *Purpose of Teleconference:* PPL Montana filed an application to relicense the Mystic Lake Hydroelectric Project on December 15, 2006. Commission staff may include a ''Wilderness Avoidance Alternative'' in our NEPA analysis to analyze lowered lake levels in both Mystic and West Rosebud Lakes, if needed, to prevent these two lakes from encroaching upon the Absaroka-Beartooth Wilderness Area. This teleconference is to help Commission staff determine whether any additional information is needed to analyze a ''Wilderness Avoidance Alternative'' in our NEPA document.

Magalie R. Salas,

Secretary.

[FR Doc. E6–22228 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–614–000]

Transwestern Pipeline Company, LLC; Notice of Informal Settlement Conference

December 19, 2006.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. (EST) on Tuesday, January 9, 2007, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Tom Burgess at (202) 502–6058, *thomas.burgess@ferc.gov* or Lorna Hadlock at (202) 502–8737, *lorna.hadlock@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–22216 Filed 12–27–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Robert D. Willis Hydropower Rate Schedules

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Pursuant to Delegation Order Nos. 00–037.00, effective December 6, 2001, and 00–001.00B, effective July 28, 2005, the Deputy Secretary has approved and placed into effect on an interim basis Rate Order No. SWPA–57, which increases the power rate for the Robert Douglas Willis Hydropower Project (Willis) pursuant to the following Willis Rate Schedule:

Rate Schedule RDW–06, Wholesale Rates for Hydro Power and Energy Sold to Sam Rayburn Municipal Power Agency (Contract No. DE—PM75–85SW00117)

The effective period for the rate schedule specified in Rate Order No. SWPA–57 is January 1, 2007, through September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696, *gene.reeves@swpa.gov.*

SUPPLEMENTARY INFORMATION: The existing hydroelectric power rate for the Robert Douglas Willis project is $648,096 per year. The Federal Energy Regulatory Commission approved this rate on a final basis on June 21, 2006, for the period January 1, 2006, through September 30, 2009. The 2006 Willis Power Repayment Studies indicate the need for an increase in the annual rate by $167,484 or 25.8 percent beginning January 1, 2007.

The Administrator, Southwestern Power Administration (Southwestern) has followed Title 10, Part 903 Subpart A, of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions'' in connection with the proposed rate schedule. On August 10, 2006, Southwestern published notice in the **Federal Register** (71 FR 45820), of a 60-day comment period, together with a combined Public Information and Comment Forum, to provide an opportunity for customers and other interested members of the public to review and comment on a proposed rate increase for the Willis project. The public forum was canceled when no one expressed an intention to participate. Written comments were accepted through October 10, 2006. One comment was received from Gillis & Angley, Counsellors at Law, on behalf of Sam Rayburn Municipal Power Agency and the Vinton Public Power Authority, which stated that they had no objection to the proposed rate adjustment.

Information regarding this rate proposal, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Following review of Southwestern's proposal within the Department of Energy, I approved Rate Order No. SWPA–57, on an interim basis, which increases the existing Robert D. Willis rate to $815,580, per year, for the period January 1, 2007, through September 30, 2010.

Dated: December 21, 2006.

Clay Sell,

Deputy Secretary.

United States of America Department of Energy, Deputy Secretary of Energy

In the Matter of: Southwestern Power Administration; Robert D. Willis Hydropower Project Rate

Rate Order No. SWPA–57

Order Confirming, Approving and Placing Increased Power Rate Schedule in Effect on an Interim Basis

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, the Secretary of Energy delegated to the Administrator of Southwestern the authority to develop power and transmission rates, delegated to the Deputy Secretary of the Department of Energy the authority to confirm,

approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. Delegation Order No. 0204–108, as amended, was rescinded and subsequently replaced by Delegation Orders 00–037.00 (December 6, 2001) and 00–001–00B (July 28, 2005). The Deputy Secretary issued this rate order pursuant to said delegations.

Background

Dam B (Town Bluff Dam), located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps) and provides streamflow regulation of releases from the Sam Rayburn Dam. The Lower Neches Valley Authority contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff Dam for its own use. Power was legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps study. In 1983, the Sam Rayburn Municipal Power Agency (SRMPA) proposed to sponsor and finance the development at Town Bluff Dam in return for the output of the project to be delivered to its member municipalities and participating member cooperatives of the Sam Rayburn Dam Electric Cooperative. Since the hydroelectric facilities at the Town Bluff Dam have been completed, the facilities have been renamed the Robert Douglas Willis Hydropower Project (Willis).

The Willis rate is unique in that it excludes the costs associated with the hydropower design and construction performed by the Corps, because all funds for these costs were provided by SRMPA. Under the Southwestern/SRMPA power sales Contract No. DE-PM75–85SW00117, SRMPA will continue to pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to Southwestern, and will receive all power and energy produced at the project for a period of 50 years.

In the FERC Docket No. EF06–4081–000, issued June 21, 2006, for the period January 1, 2006, through September 30, 2009, the FERC confirmed and approved the current annual Willis rate of $648,096.

Discussion

Southwestern's 2006 Current Power Repayment Study (PRS) indicates that the existing annual power rate of $648,096 does not represent the lowest possible rate needed to meet cost recovery criteria. The increased revenue requirement is due to an increase in the U. S. Army Corps of Engineers (Corps) projected future replacement investment. The Revised PRS indicates that an increase in annual revenues of $167,484 beginning January 1, 2007, is sufficient to accomplish repayment of the Federal investment in the required number of years. Accordingly, Southwestern developed a proposed rate schedule based on that increased revenue requirement.

Title 10, Part 903, Subpart A of the Code of Federal Regulations, ''Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions,'' has been followed in connection with the proposed rate adjustment. More specifically, opportunities for public review and comment during a 60-day period on the proposed Willis power rate were announced by a **Federal Register** (71 FR 45820) notice published on August 10, 2006. A combined Public Information and Comment Forum was scheduled for September 14, 2006, in Tulsa, Oklahoma. The forum was canceled as no one expressed an intent to participate. Written comments were due by October 10, 2006. Southwestern provided the **Federal Register** notice, together with requested supporting data, to the customer and interested parties for review and comment during the formal period of public participation. In addition, prior to the formal 60-day public participation process, Southwestern discussed with the customer representatives the preliminary information on the proposed rate adjustment. Only one formal comment was received during the public process. That comment, on behalf of SRMPA and the Vinton Public Power Authority, expressed no objection to the final proposed rate.

Upon conclusion of the comment period in October 2006, Southwestern finalized the PRS and rate schedule for the proposed annual rate of $815,580 which is the lowest possible rate needed to satisfy repayment criteria. This rate represents an annual increase of 25.8 percent.

Availability Of Information

Information regarding this rate increase, including studies and other supporting material, is available for public review and comment in the offices of Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Comments And Responses

Southwestern received one written comment in which the customer representative expressed no objection to the proposed rate adjustment.

Other Issues

There were no other issues raised during the informal meeting or during the formal public participation period.

Administrator's Certification

The 2006 Revised Willis PRS indicates that the annual power rate of $815,580 will repay all costs of the project, including amortization of the power investment consistent with provisions of the Department of Energy (DOE) Order No. RA 6120.2. In accordance with Delegation Order Nos. 00–037.00 (December 6, 2001) and 00–001.00B (July 28, 2005), and section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Willis power rate is consistent with applicable law and the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act, 10 CFR part 1021, and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me, I hereby confirm, approve and place in effect on an interim basis, for the period January 1, 2007, through September 30, 2010, the annual Robert Douglas Willis Hydropower Rate of $815,580 for the sale of power and energy from Robert Douglas Willis project to the Sam Rayburn Municipal Power Agency, under Contract No. DE–PM75–85SW00117, as amended. This rate shall remain in effect on an interim basis through September 30, 2010, or until the FERC confirms and approves the rate on a final basis.

Dated: 12/21/06.

Clay Sell,

Deputy Secretary.

[FR Doc. E6–22269 Filed 12–27–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pacific Northwest-Pacific Southwest Intertie Project—Rate Order No. WAPA–133

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Extending Transmission Service Rates and Notice of Extension of Public Process for Rate Adjustment.

SUMMARY: This action is to extend the existing Pacific Northwest-Pacific Southwest Intertie Project (Intertie) transmission service rates through December 31, 2007. Simultaneously, the Western Area Power Administration (Western) is extending the public process for a rate adjustment that was initiated in July 2006 under Rate Order No. WAPA–130. Without this action, the existing transmission service rates will expire December 31, 2006, and no rates will be in effect for these services. Western initiated a public process to modify the transmission service rates for the Intertie, via a notice published in the **Federal Register** on July 12, 2006. Western is extending the comment and consultation period to allow sufficient time to evaluate additional alternatives to the proposed rates. In conjunction with extending the comment and consultation period, Western will hold an additional public information forum and public comment forum.

DATES: The extended consultation and comment period begins today and will end March 28, 2007. A public information forum will be held on February 8, 2007, beginning at 10 a.m. MST in Phoenix, AZ. A public comment forum will be held February 27, 2007, beginning at 10 a.m. MST in Phoenix, AZ. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at the Desert Southwest Region Customer Service Office, 615 South 43rd Avenue, Phoenix, AZ, on the dates cited above. Send written comments to Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail *carlson@wapa.gov*. Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post information about the rate process on its Web site at *http://www.wapa.gov/dsw/pwrmkt/Intertie/RateAdjust.htm*. Western will post official comments received via letter, fax, and e-mail to its Web site after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification, such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, at the time of the meeting. Foreign nationals should contact Western at least 45 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The existing Rate Schedules consist of separate firm transmission service rates for the 230/345-kilovolt (kV) and 500-kV transmission systems and a nonfirm transmission service rate for the 230/345/500-kV transmission system. Rate Schedules INT-FT2 and INT-NFT2, Rate Order No. WAPA–71 [1], were approved for a 53-month period, beginning February 1, 1996, and ending September 30, 2000. Rate Order No. WAPA–91 [2] extended these rate schedules for a 39-month period, beginning October 1, 2000, through December 31, 2003. Rate Order No. WAPA–108 [3] extended these rate schedules again beginning January 1, 2004, through December 31, 2006. Rate Schedule INT-FT3, contained in Rate Order No. WAPA–76, [4] was approved for a 5-year period, beginning January 1, 1999, and ending December 31, 2003. Rate Order No. WAPA–108 extended this rate schedule beginning January 1, 2004, through December 31, 2006.

Western's Desert Southwest Customer Service Region entered into a rate adjustment process with a **Federal Register** notice published on July 12, 2006, (71 FR 39310), which began the initial public consultation and comment period that ended on October 10, 2006. Western seeks this extension to provide more time to evaluate additional alternatives to the proposed rates. During the original consultation and comment period, Western was evaluating the impacts of a transmission sale arrangement that would have mitigated the proposed rate increase. However, a deferral of that transaction requires Western to assess the impact on the proposed rates as presented in the public process. The evaluation period and public process will take approximately 6 months to complete, including additional formal public forums. This makes it necessary to extend the current rates under 10 CFR 903.23(b). Upon its approval, Rate Order No. WAPA–71 and Rate Order No. WAPA–76, previously extended under Rate Order No. WAPA–91 and Rate Order No. WAPA–108, will be extended under Rate Order No. WAPA–133. Rate Order No. WAPA–133 will be submitted to FERC for confirmation and approval on a final basis.

Following review of Western's proposal within DOE, I approve Rate Order No. WAPA–133, which extends the existing Intertie firm and nonfirm transmission service rates, Rate Schedules INT-FT2, INT-FT3, and INT-NFT2, through December 31, 2007.

[1] WAPA–71 (published 2/7/96, 61 FR 4650) was approved by FERC on a final basis on July 24, 1996, through September 30, 2000, in Docket No. EF96–5191–000 (76 FERC ¶62,061).

[2] WAPA–91 (published 8/29/00, 65 FR 52423) (which extended the WAPA–71 rates from October 1, 2000, through December 31, 2003) was approved by the Deputy Secretary on August 15, 2000. FERC ''accepted'' this extension pursuant to a letter order from Michael A. Coleman, Director, Division of Tariffs and Rates—West dated October 19, 2000 (Docket EF00–5191–000).

[3] WAPA–108 (published 11/7/03, 68 FR 63083) (which extended the WAPA–76 and WAPA–71/91 rates) was approved by FERC on a final basis on March 25, 2004, through December 31, 2006, in Docket No. EF04–5191–000 (106 FERC ¶62,227)

[4] WAPA–76 (published 2/9/99, 64 FR 6344) was approved by FERC on a final basis on June 22, 1999, through December 31, 2003, in Docket No. EF99–5191–000 (87 FERC ¶61,346).

Dated: December 21, 2006.

Clay Sell,

Deputy Secretary.

DEPARTMENT OF ENERGY, DEPUTY SECRETARY

In the Matter of: Western Area Power Administration Rates Extension for the Pacific Northwest-Pacific Southwest Intertie Project Transmission Service Rates

Order Confirming and Approving an Extension of the Pacific Northwest-Pacific Southwest Intertie Project Transmission Service Rates

These transmission service rates were established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This Act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other Acts that specifically apply to the project system involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) the authority to develop power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission.

Background

The existing Rate Schedules consist of separate firm transmission service rates for the 230/345-kilovolt (kV) and 500-kV transmission systems and a nonfirm transmission service rate for the 230/345/500-kV transmission system. Rate Schedules INT-FT2 and INT-NFT2, Rate Order No. WAPA–71, were approved for a 53-month period, beginning February 1, 1996, and ending September 30, 2000. Rate Order No. WAPA–91 extended these rate schedules for a 39-month period, beginning October 1, 2000, through December 31, 2003. Rate Order No. WAPA–108 extended these rate schedules again beginning January 1, 2004, through December 31, 2006. Rate Schedule INT-FT3, contained in Rate Order No. WAPA–76, was approved for a 5-year period, beginning January 1, 1999, and ending December 31, 2003. Rate Order No. WAPA–108 extended this rate schedule beginning January 1, 2004, through December 31, 2006.

Discussion

Western's Desert Southwest Customer Service Region entered into a rate adjustment process with a **Federal Register** notice published on July 12, 2006, (71 FR 39310), which began the initial public consultation and comment period that ended on October 10, 2006. Western seeks an extension of the public process to provide more time to evaluate additional alternatives to the proposed rates. During the original consultation and comment period, Western was evaluating the impacts of a transmission sale arrangement that would have mitigated the proposed rate increase. However, a deferral of that transaction requires Western to assess the impact on the proposed rates as presented in the public process. The evaluation period and public process will take approximately 6 months to complete, including additional formal public forums. This makes it necessary to extend the current rates pursuant to 10 CFR part 903.23(b). Upon its approval, Rate Order No. WAPA–71 and Rate Order No. WAPA–76, previously extended under Rate Order No. WAPA–91 and Rate Order No. WAPA–108, will be extended under Rate Order No. WAPA–133.

ORDER

In view of the above and under the authority delegated to me by the Secretary, I hereby extend the existing Rate Schedules INT-FT2, INT-FT3, and INT-NFT2 for firm and nonfirm transmission service from January 1, 2007, through December 31, 2007.

Dated: 12/21/06.

Clay Sell,

Deputy Secretary.

[FR Doc. E6–22268 Filed 12–27–06; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8263–2]

California State Motor Vehicle Pollution Control Standards; Notice of Within-the-Scope Determination for Amendments To California's Zero-Emission Vehicle (ZEV) Standards and Notice of Waiver of Federal Preemption Decision for Other ZEV standards

ACTION: Notice Regarding Confirmation of Within-the-Scope Finding and Waiver of Federal Preemption for Amendments to California's Emission Regulations for Zero Emission Vehicles.

SUMMARY: By this decision, issued under section 209(b) of the Clean Air Act, as amended, (hereafter ''Act''), 42 U.S.C. 7543(b), the Environmental Protection Agency (EPA) today has determined that provisions of the California Air Resources Board's (CARB's) 1999–2003 amendments to the California Zero-Emission Vehicle (ZEV) regulations as they affect 2006 and prior model years (MYs) are within-the-scope of previous waivers of federal preemption granted to California for its ZEV regulations. In the alternative, EPA is also granting a waiver of federal preemption for these MYs. EPA is also granting California(s request for a waiver of federal preemption to enforce provisions of the ZEV regulations as they affect 2007 through 2011 MYs. As explained below, EPA is also making a finding that although we believe it appropriate to grant a full waiver of federal preemption for the 2007 MY, we also believe it appropriate to consider the 2007 MY regulations within-the-scope of previous waivers of federal preemption as they apply to certain vehicles that were already subject to the preexisting ZEV regulations, with the exception that requirements pertaining to heavier light-duty trucks (LDT2s) are subject to a full waiver of federal preemption. EPA, by this decision, is not making any findings or determinations with regard to the 2012 and later model years under CARB's ZEV regulations.

DATES: Any objections to the findings in this notice regarding EPA's confirmation that CARB's ZEV amendments, as they affect the 2007 MY, are within-the-scope of previous waivers must be filed January 29, 2007. Otherwise, at the end of the 30-day period, these findings will become final. Upon receipt of any timely objection, EPA will consider scheduling a public hearing to reconsider these finding in a subsequent **Federal Register** Notice. Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed February 26, 2007. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

ADDRESSES: Any objections to the within-the-scope findings in this notice, applicable to the 2007 MY, should be filed with David Dickinson at the

address noted below. The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at EPA's Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this decision are contained in Docket No. EPA–HQ–OAR–2004–0437. The docket is located at The Air Docket, room B–108, 1301 Constitution Avenue, NW., Washington, DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone is (202) 566–1742. A reasonable fee may be charged by EPA for copying docket material.

Additionally, an electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *www.regulations.gov.* After opening the *www.regulations.gov* Web site, select ''Environmental Protection Agency'' from the pull-down Agency list, then scroll to ''Keyword or ID'' and enter EPA-HQ-OAR–2004–0437 to view documents in the record of this California request. 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.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202)343–9256. E-Mail Address: *Dickinson.David@EPA.GOV.*

SUPPLEMENTARY INFORMATION: In this decision, EPA has determined that the California Air Resources Board(s (CARB's) 1999–2003 amendments to the California Zero-Emission Vehicle (ZEV) regulations as they affect 2006 and prior model years (MYs) are within-the-scope of previous waivers of federal preemption granted to California for its ZEV regulations pursuant to section 209(b) of the Act. In the alternative, EPA is also granting a waiver of federal preemption for such MYs. EPA is also granting California's request for a waiver of federal preemption to enforce certain provisions of the ZEV regulations as they affect 2007 through 2011 MY vehicles. Because the 2007 MY provisions are similar to the provisions for previous model years (with the exception of new requirements for LDT2s) EPA is also confirming that such provisions are within-the-scope of previous waivers of federal preemption.

By letter dated September 23, 2004, CARB submitted a request seeking confirmation that the amendments as they pertain to the 2003–2006 model years are within-the-scope of previous waivers and seeking a waiver of Federal preemption as the amendments pertain to the 2007 and subsequent model years. The first set of amendments, the ''1999 ZEV amendments,'' amended the existing requirement that at least 10 percent of a manufacturer(s 2003 and subsequent MY passenger cars and lightest light-duty trucks (the LDT1 category) delivered for sale in California be ZEV vehicles with no emissions. The 1999 ZEV amendments added a new option for meeting the 10 percent requirement, including up to 60 percent of the ZEV obligation of a large-volume manufacturer—and 100 percent of the obligations of an intermediate-volume manufacturer—that could be met with allowances from partial ZEV allowance vehicles (PZEVs). The ''2001 ZEV amendments'' maintained a core ZEV component but reduced the numbers of vehicles required in the near-term and broadened the scope of vehicle technologies allowed and provided a variety of multipliers to earn credits for the early introduction of ZEVs. The third set of amendments to the ZEV regulation, the ''2003 ZEV amendments,'' delayed the start of the percentage of ZEV requirements from MY 2003 to MY 2005, added the heavier light-duty trucks (LDT2s) into a manufacturers fleet population count, established an alternative compliance path for large-volume manufacturers that choose to focus on the development of fuel cell ZEVs, eliminated all references to fuel economy and vehicle efficiency from the 2001 ZEV amendments, and adjusted the credit structure for the various vehicles types. Finally, the fourth set of amendments include a requirement that 2006 and later MY battery EVs other than neighborhood electric vehicles (NEVs) be equipped with a conductive charger inlet port and an on-board charger, and a separate minor element from CARB's LEV II regulations which revised the standards for alternative fuel vehicles qualifying as partial ZEV allowance vehicles and for which CARB seeks a within-the-scope confirmation.

On January 18, 2005, a **Federal Register** notice was published announcing an opportunity for hearing and comment on CARB's request.[1] EPA received a request for a public hearing and conducted a hearing on February 17, 2005. The written comment period expired on March 29, 2005. After the close of the written comment period EPA also received a series of letters for the 2007 MY since EPA had not acted upon CARB's request at the time of the letters. Included in these letters, regarding the 2007 MY, was a new request from CARB to EPA seeking EPA's confirmation that the ZEV amendments as they affect the 2007 MY are within-the-scope of previous waivers. CARB did not include the requirements applicable to LDT2s that commence in the 2007 MY as part of this within-the-scope request.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable federal standards; whether California needs state standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

If California acts to amend a previously waived standard or accompanying enforcement procedure, the amendment may be considered within-the-scope of a previously granted waiver provided that it does not undermine California's determination that its standards, in the aggregate, are as at least as protective of public health and welfare as applicable Federal standards, does not affect its consistency with section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver decisions.

In its request letter to EPA, CARB stated that the amendments to its ZEV requirements will not cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. EPA received information during this proceeding that questioned whether the CARB ZEV amendments may be less protective for various reasons. EPA finds that the party opposing the within-the-scope determination and the waiver have not meet their burden of proof to demonstrate that the ZEV amendments undermine CARB's previous protectiveness determination or that CARB was arbitrary and capricious in its protectiveness determination. I cannot find that CARB's ZEV regulations would cause the California motor vehicle emission standards, in the

[1] 70 FR 2860 (January 18, 2005).

aggregate, to be less protective of public health and welfare than applicable Federal standards.

CARB also demonstrated continuing existence of compelling and extraordinary conditions, justifying the state's need for its own motor vehicle pollution control program. Because EPA has not received adverse public comment challenging the need for CARB's own motor vehicle pollution control program, I cannot deny the waiver based on a lack of a compelling and extraordinary conditions.

CARB stated in its request letters that the amendments do not raise any concerns of inadequate leadtime or impose any inconsistent certification requirements. EPA received information during this proceeding that questioned: whether the advance-technology partial-zero-emission vehicles (ATPZEVs) provisions of the ZEV requirements were of a type not consistent with § 202(a), and whether the partial-zero-emission vehicle (PZEV) and fuel-cell vehicle (FCV) provisions of the ZEV requirements were not consistent with § 202(a) due to considerations of technological feasibility, lead time, and cost. EPA finds that the party opposing the within-the-scope confirmation and the waiver of federal preemption has not met its burden of proof that the ZEV amendments are inconsistent with § 202(a). I cannot find that CARB's ZEV regulations, as noted, would cause the California motor vehicle emission standards to be inconsistent with § 202(a).

As explained further in the Decision Document, EPA also received comment that CARB's ZEV regulations raise ''new issues'' which require EPA to consider CARB's within-the-scope request under the criteria for a full waiver of federal preemption. EPA finds that the party opposing the within-the-scope confirmation has not met its burden of proof that the ZEV amendments raise new issues and therefore I cannot find that the within-the-scope confirmation should be denied on this basis.

Therefore I confirm that CARB's ZEV amendments as they affect the 2006 and earlier MYs, as noted above, are within-the-scope of existing waivers of federal preemption. I also find that the ZEV amendments as they affect the 2006 and earlier MYs meet the criteria for a full waiver and thus I alternatively grant a waiver of federal preemption for these MYs. I also grant a waiver of federal preemption of CARB's ZEV amendments as they affect the 2007 through 2011 MYs. As explained further in the Decision Document, EPA is not making any determinations regarding a waiver of federal preemption applicable to 2012 and later MYs.

CARB did not seek a within-the-scope confirmation of the 2007 MY as part of its initial request to EPA. However, CARB later requested EPA to consider the 2007 MY provisions (with the exception of the LDT2 requirement) as within-the-scope. While EPA did request comment regarding CARB's within-the-scope request for the 2003–2006 MYs, EPA has not done so for the 2007 MY. As explained in the Decision Document, EPA does not believe that a further official request for comment is needed at this time. Because the 2007 MY provisions are very similar to the 2005–2006 MY provisions, I confirm that the 2007 MY requirements (with the exception of the LDT2 requirement) are within-the-scope of previous waivers of federal preemption. However, any party that wishes to object to this determination may file such objection as indicated in the DATES and **ADDRESSES** section above. Upon receipt of a timely objection, EPA will consider scheduling a public hearing to reconsider these findings in a subsequent **Federal Register** Notice.

A full explanation of EPA's decision, including our review of comments received in opposition to CARB's request, is contained in a Decision Document which may be obtained as explained above.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce nonroad engines and vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: December 21, 2006.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. E6–22314 Filed 12–27–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0340; FRL–8262–6]

Boutique Fuels List under Section 1541(b) of the Energy Policy Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Energy Policy Act of 2005 (EPAct) includes a number of provisions addressing state boutique fuel programs. Section 1541(b) of this Act requires EPA, in consultation with the Department of Energy, to determine the total number of fuels approved into all state implementation plans (SIPs) as of September 1, 2004, under section 211(c)(4)(C) of the Clean Air Act (CAA). The EPAct also requires us to publish a list of such fuels, including the states and Petroleum Administration for Defense District (PADD) in which they are used, for public review and comment. On June 6, 2006, we published a draft list based upon a ''fuel type approach'' along with an explanation of our rationale in developing it. We also published an alternative list based upon a ''state specific approach.'' In this notice we are finalizing the list of total number of fuels approved into all SIPs as of September 1, 2004, based upon the fuel type approach. This notice also addresses comments that we received on the proposed draft notice and list.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, Environmental Protection Agency, MC 6406J, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: 202–343–9623; fax number: 202–343–2801; email address: *pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act (CAA), state fuel programs respecting a fuel characteristic or component that we have regulated under section 211(c) (1) are preempted.[1] EPA may waive preemption through approval of the fuel program into a State Implementation Plan (SIP). Approval into the SIP

[1] See CAA section 211(c)(4)(A), 42 U.S.C. 7545(c)(4)(A).

requires a demonstration that the state fuel program is necessary to achieve the National Ambient Air Quality Standards (NAAQS) that the plan implements.[2] ''Necessary'' means that no other measures exist that would bring about timely attainment or that other measures exist and are technically possible to implement, but are unreasonable or impracticable.[3] These state fuels programs, which are often referred to as ''boutique'' fuel programs because they differ from the federal fuel required in the area, have been adopted by the state to address a specific local air quality issue. One issue presented by boutique fuels is that when events (such as hurricanes or pipeline and refinery breakdowns) lead to fuel supply shortages, varying fuel standards can complicate the process of quickly solving the supply interruption.

The Energy Policy Act of 2005 (EPAct) amends the CAA by placing additional restrictions on our authority to waive preemption by approving a state fuel into the SIP. These restrictions are:

- We cannot approve a state fuel if it would cause the total number of fuels approved into SIPs to increase above the number approved as of September 1, 2004.
- In cases where our approval would not increase the total number of such fuels, because the total number of fuels in SIPs at that point is below the number of fuels as of September 1, 2004, then our approval requires a finding, after consultation with the Department of Energy (DOE), that the new fuel will not cause supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected or contiguous areas.[4]
- We cannot approve a state fuel into a SIP unless the fuel is already in an existing SIP within that PADD, with the exception of a 7.0 psi RVP fuel.[5] EPA's approval of a 7.0 psi RVP fuel would, however, be subject to the other EPAct restrictions.

As these restrictions make clear, how we determine the total number of fuels on the list may greatly affect states' ability to have future boutique fuels programs approved into SIPs.

Section 1541(b) of the EPAct also requires us, in consultation with the Department of Energy (DOE), to determine the total number of fuels approved into all state implementation plans (SIPs) as of September 1, 2004, under section 211(c)(4)(C), and publish a list of such fuels, including the state and PADD in which they are used for public review and comment. On June 6, 2006, we published a draft list of state fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004 for public review and comment.[6] The notice included our draft interpretation of the various EPAct boutique fuels provisions described above. As we discussed in the notice, the EPAct is ambiguous as to the meaning of ''total number of fuels.'' We provided two proposed interpretations for developing the list. The first proposed approach was the ''fuel type approach.'' As explained in the notice, this approach would treat each type or kind of fuel as a separate fuel, without respect to the number of different state implementation plans that include this fuel type. For example, all state fuels with a Reid Vapor Pressure of 7.8 pounds per square inch (psi) would be considered as one fuel in determining the total number of fuels approved as of September 1, 2004.[7] While several states had a 7.8 psi RVP program on that date, they would not be treated as different fuels in determining the ''total number of fuels,'' but as different states using a single fuel type. This approach resulted in a draft list with seven different fuel types. 71 FR 32533.

We also provided an alternative interpretation, called the ''state specific approach.'' Under this approach, each individual state using a type or kind of fuel in a SIP would be considered a separate fuel. For example, each state having a 7.8 psi RVP fuel in its SIP could be treated as having a separate fuel for purposes of determining the ''total number of fuels.'' The state specific interpretation would lead to as many fuels as there are state fuel programs in the various PADDs and, as proposed, would have resulted in 15 different fuels.[8] 71 FR 32533–34.

A. Our Final Interpretation of the EPAct Boutique Fuel Provisions

In today's notice, we are adopting the fuel type interpretation. We are determining the total number of state fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004 based on the fuel type interpretation. We will use both the fuel type interpretation and the final list of fuels in implementing the three EPAct criteria for future decisions on approval of a state fuel into a SIP. Specifically, these criteria present the following restrictions on our ability to approve future state fuels into SIPs:

- We cannot approve a state fuel into a SIP under section 211(c)(4)(C) if it would cause the total number of fuel types on the list to increase above the number approved on September 1, 2004.[9] Under the fuel type interpretation, our approval of a state 7.8 psi RVP program, for example, would not cause an increase in the number of fuel types on the list because that type of RVP program is already on the list.
- In cases where our approval of a fuel would increase the total number of fuels types on the list but not above the number approved as of September 1, 2004, because the total number of fuel types in SIPs is below the number of fuels types as of September 1, 2004, we are required to make a finding after consultation with the DOE that the fuel does not cause supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected or contiguous areas. Under the fuel type interpretation, where there is ''room'' on the list, we may approve a state fuel program, after consultation with the DOE, and a finding that the state fuel will not cause either supply or distribution interruptions or have a significant adverse impact on fuel producibility in either the affected or contiguous areas.
- We cannot approve a state fuel into a SIP unless that fuel type is already in a SIP in the applicable PADD, with the exception of the 7.0 psi RVP fuel type.[10] Under the fuel type interpretation that we are adopting today, the PADD restriction would not extend to our approval of a 7.0 psi RVP fuel, although our approval of a 7.0 psi RVP fuel would remain subject to the other EPAct restrictions, discussed above. See also Section I.C. below for a further discussion of our interpretation and

[2] NAAQS are standards for ambient levels of certain air pollutants (e.g. ground-level ozone) and are designed to protect public health and welfare.

[3] *See* CAA section 211(c)(4)(C)(i), 42 U.S.C. 7545(c)(4)(C)(i).

[4] *See* CAA section 211(v)(4)(C)(v)(IV), 42 U.S.C. 7545(c)(4)(C)(v)(IV).

[5] *See* CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V). For a pictorial depiction of the PADD map, please refer to ''Petroleum Administration for Defense Districts'' at *http://www.eia.doe.gov/pub/oil_gas/petroleum/analysis_publications/oil_market_basics/paddmap.htm.*

[6] *See* ''Draft Boutique Fuels List Under Section 1541(b) of the Energy Policy Act and Request for Public Comment—Notice.'' 71 FR 32532, 32533 (June 6, 2006).

[7] Reid Vapor Pressure is the common measure of fuel volatility. Volatility is the tendency of fuel to evaporate.

[8] For a more detailed description of the ''fuel type approach'' and the ''state specific approach,'' see 71 FR 32532, 32533–34. Also see the tables corresponding to these approaches on pages 32535–36 of that notice.

[9] *See* CAA section 211(c)(4)(C)(v)(I), 42 U.S.C. 7545(c)(4)(C)(v)(I).

[10] *See* CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V).

implementation of the PADD restriction provision in PADD 5.

B. List of Fuel Types

We have also modified the draft list in response to comments that we received on the proposed notice, and it now contains a total of 8 different fuel types. See Section III, below, for the final List of State Fuels approved under section 211(c)(4)(C) as of September 1, 2004.

(i) 9.0 psi RVP Fuel Type

In proposing the draft list of boutique fuels, we recognized that there were a few states that had 9.0 psi RVP fuel programs approved into their SIPs as of September 1, 2004. We explained, however, that we do not believe that we should include a 9.0 psi RVP fuel type on the boutique fuels list required by EPAct. We explained that we were obligated to publish a list based on the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004, and also required to remove a fuel that is ''identical to a Federal fuel formulation implemented by the Administrator,'' from the list.[11] Because the current federal RVP requirement in all of these northeastern states is 9.0 psi RVP, and was as of September 1, 2004, reading the EPAct provisions literally would require EPA to include a 9.0 psi RVP fuel type on the list but to remove it from the list at the same time. We proposed to exclude the 9.0 psi RVP fuel type from the list in order to avoid this illogical outcome. As we further explained in the notice, we do not believe that the 9.0 psi RVP fuel type would be viewed as contributing to the proliferation of ''fuel islands'' that Congress was concerned about.[12] We continue to believe that the appropriate way to reconcile these apparently conflicting provisions is to exclude the 9.0 psi RVP fuel type from the list. We do not believe that adoption of the fuel type interpretation affects our decision not to list the 9.0 psi RVP fuel type.

We received two comments concerning our treatment of the 9.0 psi RVP fuel type. Our response to these comments can be found in ''Section II. Comment Summary and Response,'' below.

(ii) Arizona Clean Burning Gasoline (CBG)

Under our proposed fuel type interpretation, we listed the total number of fuels based on the kind or type of fuel approved into a SIP as of September 1, 2004. 71 FR 32533. We also determined the fuel type or kind based on the required specific fuel components, specifications, or limits of each fuel type (for example, 7.8 psi RVP, 7.2 psi RVP or 7.0 psi RVP). At proposal therefore, we listed 7.0 psi RVP as a fuel type with Arizona as one of the 5 states that uses this fuel type. We also listed Arizona Clean Burning Gasoline (CBG) as a separate fuel type. We received two comments on our proposal. Both commenters recommended that we list Arizona CBG as two types of fuels, namely summertime and wintertime CBG. Both commenters said that specifications for CBG were different in winter, which was described as the period beginning November 2–March 31, and summer, which was described as the remaining portions of the calendar year. Also one commenter stated that both summer and winter CBG have different specifications for RVP, sulfur, aromatics, olefins, E200 and E300.

In today's notice, we are listing Arizona CBG as two fuel types—summer CBG and non-summer CBG. (See section III below for our final list of the fuel types). We agree with the commenters that Arizona's CBG program has several components, specifications or limits for summer CBG, such as the 7.0 psi RVP requirement, that are different from non-summer CBG. We also believe summer CBG requirements, which have been adopted by Arizona to address ozone nonattainment, include the 7.0 psi RVP requirement. We are therefore listing summer CBG as one fuel type, because it has specifications that are different from non-summer CBG. We have removed Arizona from the list as one of the states that uses the 7.0 psi fuel type. We believe that our decision to list CBG as two fuel types is similar to our listing of the Atlanta 7.0 psi RVP with sulfur provisions as a separate fuel type. At proposal we also specified the control period for Arizona's 7.0 psi RVP program as June 1-September 30. In today's notice, we are specifying May 1–September 30 as the time period for the CBG summer control period, in order to correspond with the start date of Arizona's summer CBG control period (May 1) and the end date of Arizona's 7.0 psi RVP control period (September 30).

One consequence of our decision to list Arizona CBG as two fuel types is that states in PADD 5 seeking to adopt state fuel programs would now have a wider choice of fuel types for purposes of addressing local air quality problems.

(iii) RVP Fuel Types that Do Not Provide a 1.0 psi Waiver for Ethanol-Blended Gasoline

In our draft list published June 6, 2006, we did not list any of the RVP programs that do not provide a 1.0 psi waiver for ethanol-blended gasoline as separate fuel types. More specifically, we proposed listing the 7.8 psi RVP program for western Pennsylvania, and the 7.0 psi RVP program for El Paso, Texas as part of the 7.8 psi and 7.0 psi fuel types respectively. Both programs explicitly do not provide a 1.0 psi waiver for ethanol blends, and we have approved this requirement into the respective SIPs.[13] We received two comments supporting our proposed decision not to list these fuel programs as separate fuel types, and one comment inquiring as to why EPA made no mention of RVP waivers for 10% ethanol-gasoline blends. Our response to these comments can be found in ''Section II. Comment Summary and Response,'' below.

Listing fuel programs as separate fuel types depending on whether they allow or do not allow a 1.0 psi waiver for ethanol-blended gasoline would have several consequences. First, states in the same PADD as either Pennsylvania and Maine (PADD 1), or Texas (PADD 3), that want to adopt 7.8 psi RVP programs, would not be able to adopt a 7.8 psi RVP program in their SIP that allows a 1.0 psi waiver for ethanol-blended gasoline, because there is no 7.8 psi RVP program approved in any SIP in either PADD 1 or 3 that allows a 1.0 psi waiver for ethanol blends. Conversely, states in PADD 2 that want to adopt a 7.8 psi RVP program would only be able to adopt a 7.8 psi RVP program that allows a 1.0 psi waiver for ethanol-blended gasoline, because there is no RVP program approved in a SIP in PADD 2 that does not allow a 1.0 psi waiver for ethanol blends.

Another consequence of listing separate fuel types for areas that do not allow a 1.0 psi ethanol waiver is that we would have to decide how to treat the 7.0 psi RVP fuel type under EPAct. The EPAct treats the 7.0 psi RVP fuel type differently from other fuel types by allowing EPA to approve a state 7.0 psi RVP fuel even if no other states in the same PADD already have a 7.0 psi RVP fuel approved in their SIP (see Section I.C. below). The EPAct does not specify whether future approvals of 7.0 psi RVP SIP fuels should be allowed with a 1.0

[11] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III).

[12] See 71 FR 32532, 32534.

[13] Most SIPs explicitly allow the 1.0 psi waiver for ethanol-blended gasoline. However, some SIPs are silent regarding the 1.0 psi waiver for ethanol-blended gasoline, and our understanding is that these SIPs do not allow for such a waiver.

psi ethanol waiver, without a 1.0 psi ethanol waiver, or whether states should be able to choose whether or not they want to allow a 1.0 psi ethanol waiver.[14]

We are not listing RVP programs as separate fuel types according to whether or not they allow the 1.0 psi ethanol waiver. We believe that listing SIP fuels in this manner would reduce fuel fungibility and reduce states' flexibility, which are contrary to Congressional intent. As explained above, one consequence of such a listing is that a state in PADD 1 that wants to adopt a 7.8 psi RVP program into their SIP could not allow the 1.0 psi ethanol waiver because there is no RVP program in a SIP in PADD 1 that allows a 1.0 psi waiver for ethanol-blended gasoline. We believe that if a state in PADD 1 adopts a 7.8 psi fuel program that does not allow a 1.0 psi waiver for ethanol-blended gasoline, refiners would be required to either not blend ethanol into gasoline in the area covered by the new SIP, or supply a special sub-RVP blendstock which, when blended with ethanol, would meet the 7.8 psi RVP standard. If refiners choose to supply a special blendstock, which meets the 7.8 psi RVP standard when blended with ethanol, the blendstock would have to be produced and transported separately from all other fuels. We believe this would run counter to EPAct's intention of promoting fuel fungibility.

Additionally, because the exception allowed for 7.0 psi RVP fuel programs makes no mention as to whether new 7.0 psi RVP fuel programs should be permitted with or without the 1.0 psi ethanol waiver, we believe that Congress was primarily concerned with classifying fuel types according to RVP limits, instead of whether or not they allowed the 1.0 psi ethanol waiver. We therefore, believe that listing fuel types solely according to RVP limits is most consistent with Congress's intent to improve fuel fungibility.

C. Removal of Fuel Types from the List

We are required to remove a fuel from the published list of fuels if the fuel is either identical to a federal fuel or is removed from the SIP into which it is approved.[15] At proposal we explained that under the fuel type interpretation, a fuel type would be removed from the list only if that fuel type was either identical to a federal fuel or removed from all SIPs with that type of fuel program. 71 FR 32534. We also proposed how we would implement the provision relating to removal of a fuel from the published list.[16] 71 FR 32535. We received two comments on our proposed implementation of this provision to remove a fuel from the published list. Our response to these comments can be found in ''Section II. Comment Summary and Response,'' below.

In today's notice we are adopting the fuel type interpretation, and as proposed we will be removing a fuel from the list if it is either identical to a federal fuel or if it is removed from all SIPs into which it is approved. Our removal of a fuel type that either ceases to exist in any SIP or that is identical to a federal fuel formulation may create ''room'' on the list, and subsequently, subject to the three restrictions discussed above, we can approve a ''new fuel'' type into a SIP.

D. Approval of a ''New Fuel''

The EPAct provides that before approving a ''new fuel'' into a SIP, where there is room on the list for additional fuels, we must make a finding, after consultation with the DOE, on the impact of the ''new fuel'' on fuel supply, distribution, and producibility. We also addressed the EPAct use of the term ''new fuel'', under the fuel type interpretation.[17] We explained that the term ''new fuel'' may be somewhat problematic under the fuel type interpretation. A new fuel type would be a fuel type that is not already on the list, however, the PADD restriction would preclude the approval of a new fuel type if that fuel type is not already approved into a SIP in the applicable PADD.[18] At proposal, we explained that because there is an exception to the PADD restriction for a 7.0 psi RVP program, we could under limited circumstances give meaning to the term ''new fuel'' under the proposed fuel type interpretation.[19] We received one comment on our proposed implementation of this provision for the addition of a ''new fuel'' to the published list. Our response to this comment can be found in ''Section II. Comment Summary and Response,'' below.

In today's notice, we are adopting the fuel type interpretation, and as proposed, we will give meaning to the term ''new fuel'' under the limited circumstances where a state seeks to adopt a 7.0 psi RVP program. At such a time, we also expect to make a finding on the impact of the ''new fuel'' on fuel supply, distribution, and producibility, after consultation with the DOE.

We also believe that we could give meaning to the term ''new fuel'' where states within PADD 5 seek our approval to adopt a fuel program that has been approved into California's SIP. See our discussion of the PADD restriction, California Air Resources Board (CARB) fuels, and states in PADD 5 in Section I.D. below. We believe that under this additional limited circumstance, where states in PADD 5 are seeking to adopt CARB fuels approved into California's SIP, and there is room on the list for a new fuel type, we could give meaning to the term ''new fuel'' to include a CARB fuel program, under the fuel type interpretation that we are adopting today. At such a time, we will also make a finding on the impact of the ''new fuel'' on fuel supply, distribution, and producibility, after consultation with the DOE.

E. The PADD Restriction

The EPAct constrains our approval of ''any fuel unless that fuel'' was already approved into at least one SIP in the applicable PADD as of the date of our consideration of a state's request.[20] At proposal we explained that for a state fuel program to be approved into a SIP in the future, the effect of the PADD restriction is that the fuel type must have been approved into a SIP in that PADD as of the date of our consideration of a state's request (with the exception of 7.0 psi RVP programs).[21] We explained in the notice that the PADD restriction places a strong constraint on our future approval of ''boutique fuels'' because it effectively limits state fuels to both the types of fuels currently in existence, and to the PADDs in which they are currently found.[22] We also received several comments on our treatment of CARB fuels. Our response to these comments can be found below in section II.B.

In today's notice we are adopting the fuel type interpretation and finalizing a

[14] It is important to note that this discussion of approval of state fuel programs with or without a 1.0 psi waiver for ethanol blends has no impact on EPA's federal RVP program. In the federal RVP program there is a 1.0 psi waiver for ethanol blends, subject to the provisions for exclusion of the 1.0 psi waiver adopted in EPAct. Section 211(h)(4), (5). EPA's interpretation of the section 211(c)(4)(C) boutique fuels provisions above has no impact on the federal RVP program adopted under the provisions of section 211(h).

[15] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III).

[16] See 71 FR 32532, 32534.

[17] See CAA section 211(c)(4)(C)(v)(IV), 42 U.S.C. 7545(c)(4)(C)(v)(IV).

[18] See CAA section 211(c)(4)(C)(v)(IV), 42 U.S.C. 7545(c)(4)(C)(v)(V) and 71 FR 32532, 32534.

[19] Congress exempted 7.0 psi RVP programs from the PADD restriction. While the other EPAct provisions on boutique fuels do apply to 7.0 psi RVP programs, the specific limitation on PADD usage in section 211(c)(4)(C)(v)(V) does not apply. Also see 71 FR 32532, 32534.

[20] See CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V).

[21] See 71 FR 32532, 32534.

[22] See 71 FR 32532, 32534–32535.

list of fuel types under this interpretation. Moreover, as proposed, we can approve a state fuel program if the fuel type (except for 7.0 psi RVP programs) has been approved into a SIP in the applicable PADD as of the date of our consideration of a state's request. Additionally, because we are allowed to approve a fuel if it is ''approved in at least one [SIP] in the applicable [PADD],'' we believe that there is a limited circumstance in PADD 5 where we could approve a fuel type that is in a SIP in that PADD although such a fuel type is not on the list that we have published today.[23] Our approval would however, be subject to the three restrictions we have listed and discussed earlier. If our approval will not cause an increase in the number of fuel types above those approved as of September 1, 2004, i.e., if there is ''room on the list,'' we could approve for states within PADD 5 a fuel program that is in California's SIP, without violating the PADD restriction. CARB fuels are approved into California's SIP, but because the approval is not under CAA section 211(c)(4)(C) we have not placed CARB fuels on the list of fuels we are publishing today. Under the PADD restriction provision, however, we are only required to approve a fuel if it is ''approved in at least one [SIP] in the applicable [PADD].'' We would, therefore, not be prohibited from approving CARB fuels for states within PADD 5, because CARB fuels are approved into a SIP in the applicable PADD. As earlier explained, adoption and approval of CARB fuels, however, remains subject to our meeting the three restrictions we have listed and discussed, above.

We continue to believe that under the fuel type interpretation, states would generally adopt fuels programs but only in those limited cases where that fuel type is already found in their PADD. We also continue to believe that this interpretation addresses the ''fuel islands'' concerns, while continuing to preserve an important degree of flexibility and choice of states in developing air pollution control programs.

II. Comment Summary and Response

We received thirteen sets of comments on the boutique fuels notice. These comments were submitted to the public docket. Our responses to comments are as follows:

A. Comments on the Fuel Type Approach versus the State Specific Approach.

Comment: The Fuel Type Approach is Preferred. All commenters supported the fuel type approach except one who expressed no opinion. No commenter supported a state-specific approach.

Response: We agree that the fuel type approach is preferable for several reasons. The fuel type approach will implement the intent of the EPAct, while preserving some choice for states in meeting the NAAQS.

B. Comments Regarding State Fuel Programs Not Included on the Draft State Boutique Fuels List

Comment: Arizona Clean Burning Gasoline (CBG) should be listed as two separate fuel types. Two commenters suggested that we list Arizona CBG as two fuel types on the list—summer CBG and winter CBG. According to one commenter, this is because the Arizona CBG has specifications for RVP, sulfur, aromatics, olefins, E200 and E300 during summer that are different from the specifications for winter. The commenter also stated that the summer specifications address the ozone NAAQS, while the winter specifications address the CO NAAQS, and that the differing fuel specifications results in ''unique supply and distribution issues.'' Another commenter stated that we had failed to ''adequately characterize Arizona CBG which is actually two different fuels depending on the time of year involved.''

Response: We agree that Arizona CBG should be listed as two separate fuel types. Arizona requires winter CBG to meet a set of specific standards for RVP, sulfur, aromatics, olefins, T50, T90 and oxygen. Arizona, however, allows summer CBG to either meet the same set of specific standards (for sulfur, aromatics, olefins, T50, T90 and oxygen), or alternatively meet performance standards for emissions reductions in VOC and NO_X. As explained in Section 1.A, above, summer CBG includes specification for 7.0 psi RVP. Thus, because CBG has components, specifications or limits for summertime that are different from non-summertime specifications, we are listing CBG as two fuel types. In today's notice, therefore, we are listing summertime CBG, which includes the 7.0 psi RVP requirement and non-summertime CBG. (See Section III, below, for our list of the fuels approved into all SIPs as of September 1, 2004). We have also changed the dates in the table to reflect compliance dates for these two fuel types. We believe that the practical effect of adding a second fuel type for Arizona CBG is small, although we note that for states in PADD 5 this changes one fuel type (CBG) into two fuel types (summer and non-summer CBG) for consideration of approval to their SIPs for purposes of addressing local air quality issues.

Comment: State RVP programs that do not provide a 1.0 psi RVP waiver for ethanol-blended gasoline should be listed as separate programs. Two state fuels programs (western Pennsylvania and El Paso, Texas) do not provide a 1.0 psi RVP waiver for ethanol-blended gasoline in their RVP fuel programs. Two commenters stated that these fuel programs should not be listed as separate fuel types. Also, one commenter stated that EPA made no mention of RVP waivers for 10% ethanol-gasoline blends and the impact these may have on the list of fuel types.

Response: As explained above, we are not listing the 7.8 psi RVP western Pennsylvania program and 7.0 psi RVP El Paso, Texas programs that do not allow the 1.0 psi waiver for ethanol blended gasoline as two separate fuel types. As also explained in the preamble, we believe that listing fuel types according to whether they do or do not allow a 1.0 psi ethanol waiver would run contrary to Congress's intention to improve fuel fungibility through the boutique fuel list. As further explained in the preamble, because the PADD restriction exception allowed for 7.0 psi RVP fuel programs makes no mention as to whether new 7.0 psi RVP fuel programs should be permitted with or without the 1.0 psi ethanol waiver, we do not believe that Congress intended use of this criteria for listing fuel types.

Comment: ''Historical'' 9.0 psi RVP programs should be on the list. In 1989 we set nationwide RVP standards for gasoline sold during the summer, in two phases. Phase I applied to 1990 and 1991, and Phase II applied to 1992 and later years. Generally, we set the RVP level at 10.5 psi and 9.0 psi in the northern states, under Phase I and II, respectively.[24] Between 1989 and 1992, some northeastern states also adopted 9.0 psi RVP programs, which we approved into their SIPs under section 211(c)(4)(C). These 9.0 psi RVP programs remain in the SIPs of several northeastern states. Two commenters supported our decision to not include these 9.0 psi RVP fuel programs on the list. However, one commenter suggested that we should include these programs on the boutique fuels list and that failure to include them would not fulfill

[23] CAA section 211(c)(4)(C)(v)(V), 42 U.S.C. 7545(c)(4)(C)(v)(V)

[24] See 40 CFR 80.27(a)(1) and (2).

Congressional intent. This commenter also stated that listing the 9.0 psi RVP fuel type and then subsequently removing the 9.0 psi RVP fuel type would provide ''room'' on the list for the adoption of another state fuel program for the northeastern states, or more specifically states in PADD 1.

Response: We do not believe that the 9.0 psi RVP fuel type should be included on the list. We proposed not to list the 9.0 psi RVP programs as a way of reconciling the somewhat conflicting provisions requiring us to list fuels and to remove fuels that were identical to federal fuel programs. At proposal, we explained that we were obligated to publish a list based on the total number of fuels approved into SIPs under section 211(c)(4)(C) as of September 1, 2004, and also required to remove a fuel that is ''identical to a Federal fuel formulation implemented by the Administrator'' from the list. We further explained that reading these provisions literally would require us to simultaneously include 9.0 psi RVP on the list we are publishing today and at the same time to remove it from the list. We concluded that although several of these 9.0 psi RVP programs remain in the SIPs of some northeastern states, Congress would not have intended such an illogical approach, primarily because the 9.0 psi RVP program could not be viewed as contributing to the proliferation of 'fuel islands.''[25] We continue to believe that we should not list 9.0 psi RVP as a fuel type on the list, and in today's notice we are not including 9.0 psi RVP as a fuel type on the list.

We also do not believe that listing and then removing the 9.0 psi RVP fuel type would provide for the adoption of a new state fuel type for states in PADD 1. As mentioned previously, the PADD restriction strongly constrains our future approval of ''boutique fuels'' because states are limited to the types of fuels already approved into SIPs in their PADDs, with the exception of the 7.0 psi RVP fuel type. Adding a 9.0 psi RVP fuel type to the list and then removing it would not change this. States in PADD 1 would still be limited to adopting a fuel already in a SIP in their PADD or a 7.0 psi RVP fuel. Therefore, we have not included 9.0 psi RVP programs in the boutique fuels list published today.

Comment: CARB fuels should be included on the Boutique Fuels list. Some commenters indicated that the CARB reformulated gasoline (RFG), and diesel programs should be included on the list. One commenter believed that the list should include CARB RFG and diesel programs, and questioned our decision not to list these programs. Other commenters stated that although CARB RFG and diesel programs have not been approved into a SIP under section 211(c)(4)(C), they should be included on the list because they present the same logistical issues as boutique fuel programs. Another commenter urged us to inform Congress of our lack of authority to address CARB RFG and diesel programs under section 211(c)(4)(C) if we believed we lacked such authority.

Response: CAA section 211(c)(4)(C)(v)(II) requires us to determine and publish the ''total number of fuels'' approved into all SIPs, under section 211(c)(4) as of September 1, 2004. We believe this provision specifically refers to state fuels programs ''approved'' into SIPs under section 211(c)(4)(C). With such specific language, we do not believe that Congress intended us to include CARB fuel programs that are approved into a SIP under section110, based upon the ''allowance'' from preemption provided under section 211(c)(4)(B), instead of ''approved'' under section 211(c)(4)(C). We also note that under limited circumstances, such as when there is room on the list, adoption by a state in PADD 5 of CARB RFG or diesel fuels programs would not violate the PADD restriction. See our discussion in Section 1.D, above. Such adoption and approval, however, would remain subject to the other restrictions on our authority to approve state fuels.

Comment: State Oxygenated fuels should be included on the Boutique Fuels list Some commenters indicated that Congress intended that EPA should include state oxygenated fuels programs on the boutique fuels list, even though they acknowledged that these programs are not approved into SIPs under section 211(c)(4)(C). Similarly, a commenter noted that Nevada's oxygenated fuels program contains an ethanol mandate that should be included on the list. This commenter also noted that the Nevada program includes a 9.0 psi RVP cap in winter.

Response: Section 211(c)(4)(C)(v)(II) requires us to determine the total number of fuels we have approved into all SIPs, under section 211(c)(4)(C), as of September 1, 2004 and publish a list of such fuels. We believe this provision specifically refers to state fuels programs ''approved'' into SIPs under section 211(c)(4)(C). With such specific language, we do not believe that Congress intended us to include oxygenated fuels programs that were not approved into SIPs under section 211(c)(4)(C), but, rather, were approved under sections 110 and 211(m). Since the Nevada ethanol requirement is part of an oxygenated fuels program that we approved under sections 110 and 211(m), we do not believe it should be included on the boutique fuels list we are adopting today. Also, since there are no federal wintertime RVP controls, the Nevada wintertime RVP cap is not preempted and is not approved into the SIP under section 211(c)(4)(C), and we do not believe it should be included on the boutique fuels list we are adopting today.

Comment: State biofuel mandates should be included on the Boutique Fuels list. Some commenters stated that the list should include fuels required by state biofuel mandates.

Response: Section 211(c)(4)(C)(v)(II) requires us to determine the total number of fuels we have approved into all SIPs, under section 211(c)(4)(C), as of September 1, 2004. We believe this provision is very specific in referring to state fuels programs ''approved'' into SIPs under section 211(c)(4)(C). Since the ethanol and biofuel mandates (including biodiesel) that the commenters reference were not approved into a SIP under section 211(c)(4)(C) as of September 1, 2004, they should not be placed on the list.

C. Addition and Removal of a Fuel Type From the List

Comment: Two commenters noted that beginning in 2007 there should be an opportunity to consolidate the boutique fuel list by eliminating the unique gasoline sulfur requirements for Atlanta, Georgia. According to the commenters, beginning in 2007 early sulfur credits under the Tier 2 gasoline sulfur program will have been exhausted and Atlanta and other parts of the country would be receiving the same gasoline with regard to sulfur content. The Atlanta program would simply be listed as one of the states using the 7.0 psi RVP fuel type.

Response: As discussed above, we must remove a fuel from the list when the fuel type is ''identical to a Federal fuel formulation implemented by the Administrator.''[26] Considering removal of the Atlanta program from the list, at this stage, however, would be premature.

Comment: One commenter recommended that EPA clarify the procedure for adding a fuel to the list. The commenter inquired as to whether EPA would approve either a new fuel

[25] See 71 FR 32534 for a more detailed discussion of our treatment of 9.0 RVP fuel programs.

[26] See CAA section 211(c)(4)(C)(v)(III), 42 U.S.C. 7545(c)(4)(C)(v)(III)

only for use in PADD 1 or one that could be used in any other PADD subsequent to removal of a fuel type such as the ''summer 7.0 psi RVP gasoline with sulfur provisions,'' which the commenter noted is currently in use only in PADD 1. The commenter also inquired as to whether a state in PADD 3 could substitute ''summer 7.0 psi RVP gasoline with sulfur provisions'' fuel type with another new fuel type. The commenter further inquired as to whether such a substitution would violate the PADD restriction in section 211(c)(4)(C)(v)(V).

Response: In sections I.B. and C. of the preamble, we discussed how we may remove a fuel type from the list, and approve a ''new fuel'' into a SIP under EPAct. In section I.D. of the preamble we also discussed how the PADD restriction in section 211(c)(4)(C)(v)(V) places a strong constraint on our future approval of ''boutique fuels'' by effectively limiting state fuels to both the types of fuels currently in existence, and to the PADDs in which they are currently found, with the exception of 7.0 psi RVP fuel type. We expect that if the ''summer 7.0 psi RVP gasoline with sulfur provisions'' fuel type in PADD 1 is removed from the list, the only fuels types we may approve into a SIP in PADD 3 would be fuel types that are approved into SIPs in PADD 3 as of the date of our consideration of a state's request to approve a fuel type.

D. Consultation with DOE

Comment: One commenter stated that EPA's consultations with DOE should be part of the public record.

Response: We agree with this comment. We did consult with DOE Staff as part of the development of the June 6, 2006 notice and the draft boutique fuels list it announced. We have docketed DOE's concurrence with the approach proposed. We have also consulted with DOE staff on developing today's notice and the list it adopts and we have docketed DOE's concurrence with this final notice.

E. General Comments

Comment: EPA should explain how the list will be affected by a request from a state governor not to allow the 1.0 psi ethanol waiver as permitted by section 211(h)(5) of EPAct.

Response: As mentioned earlier in the preamble, our approval of state fuel programs with or without a 1.0 psi waiver for ethanol blended gasoline does not have any impact on federal RVP programs, which are authorized by section 211(h). For areas covered by federal RVP programs, section 211(h)(4) of the Clean Air Act allows a 1.0 psi RVP waiver for gasoline blends containing 10% ethanol. Section 211(h)(5) also permits the governor of a state to petition EPA to remove the 1.0 psi RVP waiver if the state provides documentation that the 1.0 psi ethanol waiver increases emissions. The EPA's interpretation of section 211(c)(4)(C) above, has no impact on such federal RVP programs.

Comment: EPA should provide a more nuanced analysis of fuel categories that considers how fuel properties fall into a hierarchy of substitutability that affects supply flexibility, both from a perspective of vehicle impacts as well as legal constraints. For example, a state requiring gasoline with a 7.8 RVP limit also can legally allow gasoline with a 7.2 or 7.0 RVP limit.

Response: Fuels that meet more stringent standards than those required by a SIP may be supplied as compliant fuel in any SIP covered area. Evaluating SIP fuels from a perspective of vehicle impacts is outside the scope of today's Notice.

Comment: EPA approval of state fuels should include supply impacts of all unique fuels, such as California fuels, state winter oxygenate fuels, state-mandated biofuels, federal RFG, and federal RVP-controlled fuels. Several commenters recommended that, when reviewing the supply impacts of a proposed SIP fuel, EPA consider all unique fuels, such as California fuels, state winter oxygenate fuels, state-mandated biofuels, federal RFG, and federal RVP-controlled fuels, even if these fuels are not on the boutique fuel list that we are publishing in today's notice. Commenters also urged EPA to include these unique fuel requirements in the § 1509 Fuel Harmonization Study that EPA and DOE are currently preparing for Congress.

Response: As explained above, before approving a ''new fuel'' into a SIP, where there is ''room'' on the list, EPA is required to make a finding, after consultation with the DOE, on the impact of the ''new fuel'' on fuel supply, distribution, and producibility. In reviewing the supply implications of a ''new fuel,'' EPA agrees that it is reasonable to consider all fuels in the area although such fuels are not on the boutique fuels list. The supply implications of a ''new fuel'' can best be understood by evaluating them in the context of the other fuel requirements applicable to fuel distributed in that area. Therefore, we believe it is appropriate to consider ''unlisted'' fuels such as biofuels or oxygenated gasoline when determining whether or not a ''new fuel'' will present supply or distribution interruptions or will have a significant adverse impact on fuel producibility in the affected or contiguous areas. We also recognize that including these ''unlisted'' fuels in the EPAct section1509 fuel harmonization study is appropriate.

Comment: One commenter said that EPA should allow more time for states to demonstrate attainment with the 8 hour ozone NAAQS and the PM2.5 NAAQS. Allowing states more time will enable them to realize the benefits of federal fuels programs that have not yet been fully implemented (low sulfur gasoline and ultra-low sulfur diesel), and lessen the pressure on individual states to add motor fuel controls to their SIPs to demonstrate attainment.

Response: Determining timelines for states to demonstrate attainment with the various NAAQS is outside the scope of today's Notice.

III. Publication of the Boutique Fuel List

A list of the eight (8) fuel types approved into SIPs under section 211(c)(4)(C) as of September 1, 2004, the states, and the PADD they are used in is set forth in the following Table. Please note that this table varies from the draft table for the fuel type interpretation published in the June 6, 2006 notice, which contained seven fuel types. Specifically, we have divided the Arizona CBG program into summer and non-summer. The Arizona summer CBG program includes the 7.0 psi RVP requirement that appeared on the draft table, but covers all the CBG requirements applicable between May 1 and September 30.

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPS) UNDER CAA SECTION 211(C)(4)(C) AS OF SEPTEMBER 1, 2004

Type of fuel control	PADD	Region–state
RVP of 7.8 psi 1	1	1–ME (May 1-Sept.15)*
	1	3–PA

TOTAL NUMBER OF FUELS APPROVED IN STATE IMPLEMENTATION PLANS (SIPS) UNDER CAA SECTION 211(C)(4)(C) AS OF SEPTEMBER 1, 2004—Continued

Type of fuel control	PADD	Region–state
	2	5–IN
	2	5–MI
	3	6–TX (May 1-Oct. 1)*
RVP of 7.2 psi	2	5–IL
RVP of 7.0 psi	2	7–KS
	2	7–MO
	3	4–AL
	3	6–TX
RVP of 7.0 with gasoline sulfur provisions	1	4–GA
Low Emission Diesel	3	6–TX
Cleaner Burning Gasoline (Summer)	5	9–AZ (May 1–Sept 30)
Cleaner Burning Gasoline (non-Summer)	5	9–AZ (Oct 1–Apr 30)
Winter Gasoline (aromatics & sulfur)	5	9–NV

* Dates listed in parentheses refer to summer gasoline programs with different RVP control periods from the federal RVP control period, which runs from June 1 through September 15.

Dated: December 21, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. E6–22313 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8263–7]

Request for Member Nominees to the Proposed Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Request for nominations to the proposed Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC).

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, we are giving notice that EPA is inviting nominations for membership on the proposed Adaptation for Climate-Sensitive Ecosystems and Resources Advisory Committee (ACSERAC). The purpose of this proposed Committee is to provide advice on the conduct of a study titled, ''Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources,'' to be conducted as part of the U.S. Climate Change Science Program (CCSP). This assessment is part of a comprehensive set of assessments identified by the CCSP's Strategic Plan for the Climate Change Science Program. The proposed ACSERAC will advise on the specific issues that should be addressed in the assessment, appropriate technical approaches, the type and usefulness of information to decision makers, the content of the final assessment report, compliance with the Information Quality Act, and other matters important to the successful achievement of the objectives of the study. EPA has determined that this proposed federal advisory committee is in the public interest and will assist the Agency in performing its duties under the Clean Water Act, Clean Air Act, and the Global Climate Protection Act. The draft prospectus for the study is on the CCSP Web site at *http://www.climatescience.gov/Library/sap/sap4-4/sap4-4prospectus-final.htm.*

Proposed committee membership will total approximately ten (10) persons, who will serve as Special Government Employees or Regular Government Employees. The membership of the proposed committee will include a balanced representation of interested persons with professional and personal qualifications and experience to contribute to the functions of the proposed committee. In selecting members EPA will consider individuals from the Federal Government, State and/or local governments, Tribes, the scientific community, non-governmental organizations and the private sector with expertise, experience, knowledge and interests essential to, or affected by, the successful completion of the study. Any interested person or organization may submit a nomination. Nominations should be identified by name, occupation, organization, position, address, and telephone number, and must include a complete resume of the nominee's background, experience and expertise, and any other information considered relevant. Additional avenues and resources will be utilized by EPA in the solicitation of nominees. Copies of the Committee Charter will be filed with the appropriate congressional committees and the Library of Congress.

DATES: Nominations should be received by January 18, 2007.

ADDRESSES: Submit nominations to Joanna Foellmer (8601D), National Center for Environmental Assessment, Immediate Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Telephone: (202) 564–3208; e-mail address: *Foellmer.joanna@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Joanna Foellmer (8601D), National Center for Environmental Assessment, Immediate Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; Telephone:

(202) 564–3208; e-mail address: *Foellmer.joanna@epa.gov.* The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: The purpose of the proposed committee is to provide advice on the conduct of the study titled, ''Preliminary Review of Adaptation Options for Climate-Sensitive Ecosystems and Resources,'' to be conducted as part of the U.S. Climate Change Science Program (CCSP). This study will focus on adaptation to anticipated impacts of climate change on federally owned and managed lands and waters. Within the context of the assessment's prospectus, the proposed ACSERAC will advise on the specific issues to be addressed, appropriate technical approaches, the type and usefulness of information to decision makers, the content of the final assessment report, compliance with the Information Quality Act, and other matters important to the successful achievement of the objectives of the study. Individuals and organizations interested in submitting nominations for membership should familiarize themselves with the final prospectus for

this study, which is available at *http://www.climatescience.gov/Library/sap/sap4–4/sap4–4prospectus-final.htm.* The proposed ACSERAC is expected to meet twice in 2007: once in a face-to-face meeting in the Washington, DC, area and a second time via conference call. Nominations should be sent preferably by e-mail. If sent by either fax or regular mail, the sender is encouraged to phone (202) 564–3208 in advance.

Dated: December 21, 2006.

George Alapas,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E6–22312 Filed 12–27–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL —8263–8]

Request for Member Nominees to the Proposed Human Impacts of Climate Change Advisory Committee (HICCAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for nominations to the proposed Human Impacts and Climate Change Advisory Committee.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, we are giving notice that EPA is accepting nominees for membership on the proposed Human Impacts of Climate Change Advisory Committee (HICCAC). The purpose of this proposed Committee is to provide advice on the conduct of a study titled, ''Analyses of the effects of global change on human health and welfare and human systems,'' to be conducted as part of the U.S. Climate Change Science Program (CCSP). This assessment is part of a comprehensive set of assessments identified in the CCSP's Strategic Plan. The proposed HICCAC will advise on the specific issues that should be addressed in the assessment, appropriate technical approaches, the nature of information relevant to decision makers, the content of the assessment report, and other scientific and technical matters that may be found to be important to the successful completion of the study. EPA has determined that this proposed federal advisory committee is in the public interest and will assist the Agency in performing its duties under the Clean Water Act, Clean Air Act, and the Global Climate Protection Act. The draft prospectus for the study is on the CCSP Web site at *http://www.climatescience.gov/Library/sap/sap4–6/sap4–6prospectus-final.htm.*

Proposed committee membership will total approximately eight persons who will serve as Special Government Employees or Regular Government Employees. The membership of the proposed committee will include a balanced representation of interested persons with professional and personal qualifications and experience to contribute to the functions of the proposed committee. In selecting members, EPA will consider individuals from the Federal Government, State and/or local and/or tribal governments, the scientific community, non-governmental organizations and the private sector, with expertise, experience, knowledge and interests essential to, or affected by, the successful completion of the study. Any interested person or organization may submit a nomination. Nominations should be identified by name, occupation, organization, position, address, and telephone number, and must include a complete resume of the nominee's background, experience and expertise, and any other information considered relevant. Additional avenues and resources will be utilized by EPA in the solicitation of nominees. Copies of the Committee Charter will be filed with the appropriate congressional committees and the Library of Congress.

DATES: Nominations should be received by January 18, 2007.

ADDRESSES: Submit nominations to Joanna Foellmer (8601D), National Center for Environmental Assessment, Immediate Office, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (202) 564–3208; e-mail address: *Foellmer.joanna@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Joanna Foellmer (8601D), National Center for Environmental Assessment, Immediate Office, Office of Research and Development, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: (202) 564–3208; e-mail address: Foellmer.joanna@epa.gov. The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: The purpose of the proposed committee is to provide advice on the conduct of a study titled, ''Analyses of the effects of global change on human health and welfare and human systems,'' to be conducted as part of the U.S. Climate Change Science Program (CCSP). This study will give particular attention to the impacts of climate change on human health, human welfare, and human settlements in the United States. Within the context of the assessment's prospectus, the proposed HICCAC will advise on the specific issues to be addressed, appropriate technical approaches, the nature of information relevant to decision makers, the content of the final assessment report, compliance with the Information Quality Act, and other matters important to the successful achievement of the objectives of the study. Individuals and organizations interested in submitting nominations for membership should familiarize themselves with the draft prospectus for this study, at *http://www.climatescience.gov/Library/sap/sap4–6/sap4–6prospectus-final.htm.*

The proposed HICCAC is expected to meet twice in 2007: once in a face-to-face meeting in the Washington, DC, area and a second time via conference call. Nominations should be sent preferably by e-mail. If sent by either fax or regular mail, the sender is encouraged to phone (202) 564–3208 in advance.

Dated: December 21, 2006.

George Alapas,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. E6–22306 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2006–0998'; FRL–8262–7]

Human Studies Review Board; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of human subjects' research.

DATES: The public meeting will be held January 24, 2007 from 8:30 a.m. to approximately 5:30 p.m., Eastern time.

LOCATION: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Sheraton Crystal City Hotel is 703–486–1111.

MEETING ACCESS: Seating at the meeting will be on a first-come basis. To request accommodation of a disability please contact the person listed under

FOR FURTHER INFORMATION CONTACT at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

PROCEDURES FOR PROVIDING PUBLIC INPUT: Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes further information should contact Lu-Ann Kleibacker, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–7189; fax: (202) 564 2070; e-mail addresses: *kleibacker.lu-ann@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

ADDRESSES: Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2006–0998, by one of the following methods:

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

E-mail: *ORD.Docket@epa.gov.*

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., N.W., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington DC. The hours of operation are 8:30 AM to 4:30 PM Eastern Standard Time (EST), Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the website (*http://www.epa.gov/epahome/dockets.htm).*

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0998. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, including such studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under FOR FURTHER INFORMATION CONTACT.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW, Washington DC. The hours of operation are 8:30 AM to 4:30 PM EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the website (*http://www.epa.gov/epahome/dockets.htm*).

EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by late December 2006. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov website and the HSRB Internet Home Page at *http://www.epa.gov/osa/hsrb/.* For questions on document availability or if you do not have access to the Internet, consult the person listed under FOR FURTHER INFORMATION CONTACT.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide copies of any technical information and/or data you used that support your views.

d. Provide specific examples to illustrate your concerns and suggest alternatives.

e. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

D. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2006–

0998 in the subject line on the first page of your request.

a. Oral comments. Requests to present oral comments will be accepted up to January 17, 2007. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to the person listed under FOR FURTHER INFORMATION CONTACT no later than noon, Eastern time, January 17, 2007 in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting. b. Written comments. Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern time, January 17, 2007. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under FOR FURTHER INFORMATION CONTACT. There is no limit on the length of written comments for consideration by the HSRB.

E. Background

A. Topics for Discussion

The EPA will present for HSRB review the results of two completed insect repellent efficacy studies on which it intends to rely in making registration decisions. In addition, EPA will present for HSRB review a proposal for new research involving a field study to evaluate the efficacy of a mosquito repellent. The Board may also discuss planning for future HSRB meetings.

B. Meeting Minutes and Reports

Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov* In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under FOR FURTHER INFORMATION CONTACT.

Dated: December 21, 2006.

George M. Gray,

Science Advisor .

[FR Doc. E6–22300 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8262–8]

Science Advisory Board Staff Office; Notification of Six Public Teleconferences of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces six public teleconferences of the SAB Committee on Valuing the Protection of Ecological Systems and Services (C-VPESS) to discuss components of a draft report related to valuing the protection of ecological systems and services.

DATES: The SAB will conduct six public teleconferences on February 5, 2007, February 13, 2007, February 27, 2007, March 6, 2007, March 20, 2007, and March 27, 2007. Each teleconference will begin at 12:30 p.m. and end at 2:30 p.m. (eastern standard time).

LOCATION: Telephone conference call only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at: *nugent.angela@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Background on the SAB C–VPESS and its charge was provided in 68 Fed. Reg. 11082 (March 7, 2003). The purpose of the teleconference is for the SAB C–VPESS to discuss components of a draft advisory report calling for expanded and integrated approach for valuing the protection of ecological systems and services. The Committee will discuss draft assessments of methods for ecological valuation and application of those methods for valuing the protection of ecological systems and services.

These activities are related to the Committee's overall charge: to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services and to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Meeting Materials: Agendas and materials in support of the teleconferences will be placed on the SAB Web Site at: *http://www.epa.gov/sab/* in advance of each teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the public teleconference and/or meeting.

Oral Statements: In general, individuals or groups requesting an oral

presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Angela Nugent, DFO, in writing (preferably via e-mail) 5 business days in advance of each teleconference.

Written Statements: Written statements should be received in the SAB Staff Office 5 business days in advance of each teleconference above so that the information may be made available to the SAB for their consideration prior to each teleconference. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov*. To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: December 22, 2006.

Anthony Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. E6–22308 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8263–6]

Total Coliform Rule / Distribution System Stakeholder Technical Workshop and Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice; public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is holding a technical workshop in Washington, DC, to discuss available information on the Total Coliform Rule (TCR) and available information regarding risks in distribution systems in support of revisions to the TCR. The TCR provides public health protection from microbial contamination in drinking water while indicating the adequacy of treatment and the integrity of drinking water distribution systems. As part of the technical workshop, EPA is seeking information and analytic approaches for characterizing risks posed by the distribution system. Subsequently, if results from the workshop indicate that a formal consensus building process is appropriate for the revision effort, the Agency will consider establishing a Committee under the Federal Advisory Committee Act to provide advice and recommendations on how best to utilize available information for potential revisions to the TCR and to address public health risks from contamination of distribution systems. In addition, such a Committee could provide recommendations to determine if further information is needed to be collected to address health risks associated with distribution systems.

To prepare in advance for the potential establishment of a Federal Advisory Committee, EPA is soliciting nominations for membership on the Committee in this notice.

DATES: The public meeting will be held on Tuesday, January 30, 2007, through Thursday, February 1, 2007, from 8:00 a.m. to 5:30 p.m., Eastern time (ET). Attendees should register for the meeting by calling Jason Peller at (202) 965–6387 or by e-mail to *jpeller@resolv.org no later than January 20, 2006.*

Submit nominations for a potential Federal Advisory Committee on or before January 29, 2007.

ADDRESSES: The meeting will be held at the Capital Hilton, at 1001 16th Street NW, Washington, DC 20036. Nomination materials for the potential Federal Advisory Committee should be submitted to Jini Mohanty by email to *tcr@epa.gov* or by U.S. Mail to the Office of Ground Water and Drinking Water, Office of Water, Mail Code 4607M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Drinking Water Hotline at 1–800–426–4791 or go to the Internet site *http://www.epa.gov/safewater/disinfection/tcr/index.html.* For technical inquiries, contact Tom Grubbs, Standards and Risk Management Division, Office of Ground Water and Drinking Water (MC 4607M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5262; fax number: (202) 564–3767; e-mail address: *grubbs.thomas@epa.gov.* For special accommodation questions, email Jini Mohanty, at *mohanty.jini@epa.gov*, or call (202) 564 5269.

SUPPLEMENTARY INFORMATION: The Stage 2 Microbial and Disinfection Byproducts Federal Advisory Committee, as part of its recommendations concerning the Long-Term 2 Enhanced Surface Water Treatment Rule and the Stage 2 Disinfection Byproducts Rule, concluded in its Agreement in Principle (65 FR 83015, December 29, 2000) that EPA should evaluate available data and research on aspects of distribution systems that may create risks to public health as a part of the Six-Year Review of the TCR. They also concluded that EPA should work with stakeholders to initiate a process for addressing cross-connections and backflow prevention requirements, and for considering additional distribution system requirements related to significant health risks.

The 1996 Amendments to the Safe Drinking Water Act (SDWA) (Section 1412(b) (9)) require the Administrator to review and revise, as appropriate, each national primary drinking water regulation no less often than every six years. As indicated in the Six-Year Review Notice of Intent (67 FR 19030, April 17, 2002), EPA believes that an opportunity for implementation burden reduction exists in revising the TCR; the Agency plans to assess the effectiveness of the current TCR in reducing public health risk and what technically supportable alternative/additional monitoring strategies are available to reduce implementation costs while maintaining or improving public health protection.

In July 2003, EPA published, as part of its final National Primary Drinking Water Regulation (NPDWR) Review (i.e., Six-Year Review), its decision to revise the TCR (68 FR 42907, July 18, 2003). In that action, the Agency also stated that it plans to consider potential new requirements for ensuring the integrity of distribution systems.

To initiate the revision process, EPA has compiled available information on the potential public health impacts of a range of distribution system issues and has also compiled information on issues with the existing TCR requirements where opportunities may exist for reductions in the implementation burden, while maintaining or improving public health protection. EPA has also compiled information and conducted workshops on determining the potential exposures resulting from contamination of the finished water in the distribution system.

In this notice, EPA is announcing that the Agency is convening a technical workshop to discuss available data on understanding risks in drinking water

distribution systems, as well as to discuss data to characterize potential TCR implementation problems. As part of this workshop, EPA is seeking information and analytic approaches for characterizing risks posed by the distribution system. Major topics of discussion in the workshop may include public health perspectives on distribution systems, distribution system physical integrity and water quality issues such as cross connections, backflow, intrusion, and biofilm, and TCR implementation and compliance analysis.

Depending on the outcome of the workshop, EPA will consider convening a Federal Advisory Committee to provide advice and recommendations on how best to utilize available information for potential revisions to the TCR and to address public health risk from contamination of distribution systems.

Membership on Potential Federal Advisory Committee: If EPA were to establish a Federal Advisory Committee, the Agency would consider for membership stakeholders with viewpoints on issues related to distribution systems and the TCR and the potential impact that could result from an Agency action on those issues including, but not be limited to, representatives of Federal, State and local public health and regulatory agencies, Native American tribes, large and small drinking water suppliers, consumer, environmental and public health organizations, and local elected officials. EPA encourages those organizations and individuals interested in participating in the potential Federal Advisory Committee to attend the workshop.

EPA anticipates that, if a Federal Advisory Committee is established, the terms of the members would likely be two years. EPA anticipates that meetings would be held at least quarterly, with additional conference calls in between the meetings.

Nomination of a Member: Any interested person or organization may nominate individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience, and qualifications.

If a Federal Advisory Committee were to be established, copies of the Committee Charter would be filed with the appropriate congressional committees and the Library of Congress and the establishment of a Committee would be announced in a separate **Federal Register** Notice (FRN). The Agency expects to address proposed revisions to the TCR and any additional distribution system requirements in a separate FRN.

Special Accommodations

Any person needing special accommodations at the technical workshop, including wheelchair access, should contact Jini Mohanty at the number or email address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least ten days in advance of the meeting.

Dated: December 21, 2006.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E6–22302 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8262–4]

Proposed NPDES General Permit for Discharges From the Oil and Gas Extraction Point Source Category to Coastal Waters in Texas (TXG330000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed NPDES General Permit Reissuance.

SUMMARY: EPA Region 6 today proposes to issue a National Pollutant Discharge Elimination System (NPDES) general permit regulating discharges from oil and gas wells in the Coastal Subcategory in Texas and regulating produced water discharges from wells in the Stripper and Offshore Subcategories which discharge into coastal waters of Texas.

As proposed, the permit prohibits the discharge of drilling fluid, drill cuttings, produced sand and well treatment, completion and workover fluids. Produced water discharges are prohibited, except from wells in the Stripper Subcategory located east of the 98th meridian whose produced water comes from the Carrizo/Wilcox, Reklaw or Bartosh formations in Texas. Discharge of dewatering effluent is proposed to be prohibited, except from reserve pits which have not received drilling fluids and/or drill cuttings since January 15, 1997. The discharge of deck drainage, formation test fluids, sanitary waste, domestic waste and miscellaneous discharges is proposed to be authorized. We are proposing to reissue the existing NPDES General Permit for Discharges from the Oil and Gas Extraction Category to Coastal Waters of Texas with only one change, the addition of annual monitoring for dissolved solids from Stripper Subcategory produced water.

DATES: Comments must be received by February 26, 2007.

ADDRESS: Comments should be sent to: Ms. Diane Smith, Water Quality Protection Division, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Comments may also be submitted via e-mail to the following address: *smith.diane@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency (6WQ–CA), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 665–2145.

A copy of the proposed permit, the fact sheet more fully explaining the proposal, and a copy of the Agency's Supplemental Environmental Assessment prepared pursuant to the National Environmental Policy Act may be obtained from Ms. Smith. The Agency's current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advance notice. Additionally, a copy of the proposed permit, fact sheet, and this **Federal Register** Notice may be obtained on the Internet at: *http://www.epa.gov/earth1r6/6wq/6wq.htm*.

SUPPLEMENTARY INFORMATION: Regulated entities. EPA intends to use the proposed reissued permit to regulate oil and gas extraction facilities located in the coastal waters of Texas, e.g., oil and gas extraction platforms, but other types of facilities may also be subject to the permit. As proposed, the permit would also authorize some produced water discharges from Stripper Subcategory wells to coastal waters. To determine whether your facility, company, business, organization, etc., may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

The permit contains limitations conforming to EPA's Oil and Gas extraction, Coastal and Stripper Subcategory Effluent Limitations Guidelines at 40 CFR part 435 as well as requirements assuring that regulated discharges will comply with Texas State Water Quality Standards. Specific

information on the derivation of those limitations and conditions is contained in the fact sheet.

Other Legal Requirements

State Certification. Under section 401(a)(1) of the Clean Water Act, EPA may not issue an NPDES permit until the State in which the discharge will occur grants or waives certification to ensure compliance with appropriate requirements of the Act and State law. EPA will seek certification from the Railroad Commission of Texas prior to issuing a final permit.

National Environmental Policy Act. EPA's regulations at 40 CFR part 6, Subpart F, which implement the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C., 4331, et seq., provide the procedures for carrying out the NEPA environmental review process for the issuance of new source NPDES permits. The purpose of this review process is to determine if any significant environmental impacts are anticipated by issuance of NPDES permits authorizing discharges from new sources. In order to make this determination, EPA prepared an environmental assessment in accordance with 40 CFR 6.604 when the current permit was drafted. Based on that environmental assessment document, EPA determined that there would be no significant impact as the result of issuing that permit. When the current permit was issued, a Statement of Findings documenting the completion of EPA's NEPA review process on this permit action was signed by the Regional Administrator.

Since no new limits or changes in permit coverage are proposed, EPA has determined that reissuance of the permit does not rise to the level of a significant impact to the environment. Thus, EPA is not required to prepare another Environmental Assessment for this action.

Endangered Species Act. When EPA issued the previous Permit TXG330000, effective October 21, 1993, covering existing sources, but not New Sources, the United States Fish and Wildlife Service (FWS or the Service) concurred with EPA's finding that the permit was unlikely to adversely affect any threatened or endangered species or their critical habitat. When EPA issued Permit TXG290000, effective February 8, 1995, the Service also concurred with EPA's finding that the permit was unlikely to adversely affect any threatened or endangered species or their critical habitat. The Region found that adding New Source coverage to the permit is also unlikely to adversely affect any threatened or endangered species or its critical habitat. EPA received written concurrence from the FWS on May 2, 2001, and from the National Marine Fisheries Service (NMFS) on May 1, 2001, on that determination. Since no significant changes are proposed to the permit, EPA again finds that the reissued permit is unlikely to adversely affect any listed threatened or endangered species or their critical habitat. EPA will obtain concurrence with the determination from NMFS and FWS prior to issuing the final permit.

Magnuson-Stevens Fishery Conservation and Management Act. The 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act set forth a new mandate to identify and protect important marine and anadromous fisheries habitats. The purpose of addressing habitat in this act is to further the goal of maintaining sustainable fisheries. Guidance and procedures for implementing these amendments are contained in NMFS regulations (50 CFR 600.805–600.930). These regulations specify that any Federal agency that authorizes or proposes to authorize an activity which would adversely affect an Essential Fish Habitat is subject to the consultation provisions of the Manguson-Stevens Act. The Texas Coastal Subcategory areas covered by this general permit include Essential Fish Habitat designated under the Magnuson-Stevens Act.

Based on the prohibitions and limitations and other requirements contained in this proposed general permit, as well as the Essential Fish Habitat Assessment prepared for this permit reissuance, the Region previously found that issuance of this permit would be unlikely to adversely affect Essential Fish Habitat. EPA received written concurrence from NMFS on that determination. Since there are very few changes proposed to the permit with this reissuance, EPA again finds that its issuance is unlikely to adversely affect Essential Fish Habitat. EPA is seeking concurrence with that decision from NMFS.

Coastal Zone Management Act. The Coastal Zone Management Act and its implementing regulations (15 CFR part 930) require that any Federally licensed or permitted activity affecting the coastal zone of a state with an approved Coastal Zone management Program be consistent with that Program. EPA has concluded, based on the conditions, limitations and prohibitions of this permit that the discharges associated with this permit are consistent with the Texas Coastal Management Program goals and policies. EPA previously received a consistency determination from the Texas Coastal Coordination Council on February 13, 2001, and is seeking another consistency determination prior to issuing the final permit.

Historic Preservation Act. Facilities which adversely affect properties listed or eligible for listing in the National Register of Historical Places are not authorized to discharge under this permit.

Economic Impact (Executive Order 12866). Under Executive Order 12866 [58 FR 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. EPA has determined that this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act. The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 et seq, requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. This permit is not a ''rule'' subject to the Regulatory Flexibility Act. EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Coastal Subcategory guidelines on which many of the permit's effluent

limitations are based. That analysis shows that compliance with the permit requirements will not result in a significant impact on dischargers, including small businesses, covered by this permit. EPA Region 6, therefore, concludes that the permit being proposed today will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act. Section 201 of the Unfunded Mandates Reform Act (UMRA), Pub. L. 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, e.g., UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of Title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act (APA), or any other law * * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the Clean Water Act (CWA). While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA thinks it is unlikely that this permit issuance would contain a Federal requirement that might result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The Agency also believes that the permit issuance would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition. The permit issuance also would not uniquely affect small governments because compliance with the permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit.

Dated: December 19, 2006.

William K. Honker,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E6–22154 Filed 12–27–06; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, January 4, 2007 at 9:30 AM. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Ex-Im Bank Sub-Saharan Africa Advisory Committee for 2007.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone 202–565–3957).

Howard A. Schweitzer,

General Counsel.

[FR Doc. 06–9937 Filed 12–26–06; 2:37 pm]

BILLING CODE 6690–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 011956–002.

Title: IDX Vessel Sharing Agreement.

Parties: Emirates Shipping Line FZE; Shipping Corporation of India, Ltd.; Orient Overseas Container Line Ltd.; Italia Marittima S.p.A.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds Orient Overseas Container Line Ltd. and Italia Marittima S.p.A. as parties to the agreement, makes corresponding changes in the agreement, clarifies provisions dealing with the agreement's duration and termination, and restates the agreement.

By Order of the Federal Maritime Commission.

Dated: December 22, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–22294 Filed 12–27–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants

A. Transport, Inc., 2000 Sullivan Road, #D, College Park, GA 30337. Officer: Gi H. Song, President (Qualifying Individual).

Cane Freight, Inc., 901 W. Valley Blvd., #C, Alhambra, CA 91803. Officers: Lilin Yu, Vice President (Qualifying Individual), Zhu Yi, President.

OTA Logistics Inc., 7300 Alondra Blvd., Suite 106, Paramount, CA 90723. Officers: Davy Shum, CEO (Qualifying Individual), Tony Chen, General Manager.

Dated: December 22, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E6–22293 Filed 12–27–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 020451N.
Name: Daniel Cole Logistics, LLC.
Address: 313 F Trindale Road, Suite 201, Archdale, NC 27263.
Date Revoked: December 1, 2006.
Reason: Surrendered license voluntarily.

License Number: 018287NF.
Name: Tisco Logistics, Inc.
Address: 19 Schuyler Street, Pasippany, NJ 07054.
Date Revoked: December 7, 2006.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E6–22291 Filed 12–27–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409), and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/Address	Date Reissued
003172NF	The Interport Company, Inc., 2300 E. Higgins, Suite 209A, Elk Grove Village, IL 60007.	November 17, 2006.
016159N	American Pioneer Shipping L.L.C., 80 Morristown Road, Room 273, Bernardsville, NJ 07924.	November 23, 2006.

Sandra L. Kusumoto,
Director, Bureau of Certification and Licensing.

[FR Doc. E6–22292 Filed 12–27–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Shore—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov.*

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

Report titles: Report of Changes in Organizational Structure, Report of Changes in FBO Organizational Structure, Supplement to the Report of Changes in Organizational Structure, Notification of Foreign Branch Status, Annual Report of Bank Holding Companies, and Annual Report of Foreign Banking Organizations (collectively the Structure Reports).

Agency form numbers: FR Y–10 (formerly FR Y–10, FR Y–10F, FR Y–10S, and FR 2058), FR Y–10E, FR Y–6, and FR Y–7.

OMB control numbers: 7100–0297, 7100–0069, 7100–0124, and 7100–0125.

Effective Dates: FR Y–6, FR Y–7, and FR Y–10S: December 31, 2006; FR Y–10 and FR Y–10E: June 30, 2007.

Frequency: Event-generated, annual.

Reporters: Bank holding companies (BHCs), foreign banking organizations (FBOs), member banks, Edge and agreement corporations.

Annual reporting hours: FR Y–10, 11,072 hours; FR Y–10E, 1,384 hours; FR Y–6, 21,913 hours; FR Y–7, 900 hours.

Estimated average hours per response: FR Y–10, 1.00 hour; FR Y–10E, 0.50 hours; FR Y–6, 4.25 hours; FR Y–7, 3.50 hours.

Number of respondents: FR Y–10 and FR Y–10E, 2,768; FR Y–6, 5,156; FR Y–7, 257.

General description of report: These information collections are mandatory under the Federal Reserve Act, the BHC Act, and the International Banking Act (12 U.S.C. 248 (a)(1), 321, 601, 602, 611a, 615, 1843(k), 1844(c), 3106, and 3108(a)) and Regulations K and Y (12 CFR 211.13(c), 225.5(b), and 225.87). Individual respondent data are not considered confidential. However, respondents may request confidential treatment for any information that they believe is subject to an exemption from disclosure under the FOIA, 5 U.S.C. 552(b).

Abstract: The FR Y–10 is an event-generated information collection submitted by top-tier domestic BHCs, including financial holding companies (FHCs), and state member banks unaffiliated with a BHC, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to monitor structure information on subsidiaries and regulated investments of these entities engaged in banking and nonbanking activities.

The FR Y–10F is an event-generated information collection submitted by FBOs, including FHCs, to capture changes in their regulated investments and activities. The Federal Reserve uses the data to ensure compliance with U.S.

banking laws and regulations and to determine the risk profile of the FBO.

The FR Y–10S is a supplement to the FR Y–10. The Federal Reserve uses the data to assess the effectiveness of banking organizations' compliance with the Sarbanes-Oxley Act of 2002 and enhance the Federal Reserve's ability to evaluate regulatory data by reconciling it accurately with market data reported to shareholders.

The FR 2058 is an event-generated information collection submitted by member banks, BHCs, and Edge and agreement corporations to notify the Federal Reserve of the opening, closing, or relocation of a foreign branch. The Federal Reserve needs the information to fulfill its statutory obligation to supervise foreign branches of U.S. banking organizations.

The FR Y–6 is an annual information collection submitted by top-tier BHCs and nonqualifying FBOs. It collects financial data, an organization chart, and information about shareholders. The Federal Reserve uses the data to monitor holding company operations and determine holding company compliance with the provisions of the Bank Holding Company Act (BHC Act) and Regulation Y (12 CFR part 225).

The FR Y–7 is an annual information collection submitted by qualifying FBOs to update their financial and organizational information with the Federal Reserve. The Federal Reserve uses information to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with U.S. laws and regulations.

Current Actions: On September 13, 2006, the Federal Reserve published a notice in the **Federal Register** (71 FR 54075) requesting public comment for 60 days on the extension, with revision, of the Structure Reports. The comment period for this notice expired on November 13, 2006. The Board received comment letters from four large BHCs and three industry trade associations. Nearly all of the commenters supported the Federal Reserve's proposal to combine the FR Y–10, FR Y–10F, FR Y–10S, and FR 2058 into one event-generated reporting form. They noted that this change would streamline and simplify the data submission process. In addition to addressing the comments, the Federal Reserve decided to retain a question on the Banking and Nonbanking Schedules of the FR Y–10 on whether a company is consolidated in the respondent's financial statements. This data will be collected for certain types of foreign offices as it is needed to determine which institutions must submit the Consolidated Reports of Condition and Income (FFIEC 031 and FFIEC 041; OMB No. 7100–0036).

General Comments

Definition of Control and Reportable Investments

Several commenters raised issues concerning the control standard used to determine reportability for purposes of the reporting forms. For ease of reference, the control standard will be moved to the Glossary portion of the instructions; however, the Glossary entry for control will be identical in substance to the control standard found in the current FR Y–10 and FR Y–10F instructions. One commenter expressed concern that a reporter's control of 25 percent or more of a company's total equity could, by itself, trigger reportability for purposes of the FR Y–10. However, in 2004, references to control of 25 percent or more of total equity were deleted from the control standard used for purposes of these reporting forms and, as noted, the current revisions make no changes to this control standard.

Several commenters requested that public welfare investments be exempt from reportability on the reporting forms. In addition to their current reportability on the FR Y–10, FR Y–10F, FR Y–6, and FR Y–7, public welfare investments made through banks are also subject to prior-or post-notice filing requirements with federal banking agencies, as are a limited number of similar investments made by BHCs outside banks. To avoid duplicate reporting of these investments, the FR Y–10, FR Y–6, and FR Y–7 instructions would be revised to exempt from reportability those public welfare investments subject to prior-or post-notice filing requirements with federal banking agencies,[1] if held through a company that itself has been reported on the FR Y–10 and that is principally engaged in community development or public welfare activities.

One trade association requested an exemption from reporting interests deemed to be controlled by the reporter solely by virtue of the ''10 percent voting interest plus a director or officer interlock'' presumption used for purposes of the reporting forms. The commenter asserted that this reporting requirement could be especially onerous with respect to FBO reporting of interests on the FR Y–7 held under section 2(h)(2) of the BHC Act. As noted, no change to the definition of control for reporting purposes, including in the application of this control presumption to any of the structure reporting forms, will be made at this time. Nevertheless, the Federal Reserve will continue to consider whether limited relief from the reporting requirements applicable to section 2(h)(2) investments may be appropriate.

Several commenters questioned whether the changes to reporting of limited liability companies, partnerships, limited partnerships, and entities that are 100% owned would require institutions to submit FR Y–10 data for entities currently in existence. The commenters noted that the number of submissions could be very large. The Federal Reserve will clarify that these new requirements will only be applicable for submissions after June 30, 2007, and would not be imposed retroactively. Several commenters requested further clarifications on reporting partnerships, limited liability companies, and entities with more than one class of voting securities. The Federal Reserve will clarify the FR Y–10 instructions in response to these comments.

FR Y–10 Comments

Domestic Branch Schedule

Several substantive comments were received regarding the proposal to add a schedule to the FR Y–10 to collect data on domestic branches, The Federal Reserve is continuing to evaluate these comments and will address them in a separate **Federal Register** notice in 2007.

4(k) Schedule

Commenters also contended that the proposed FR Y–10 instructions require duplicative reporting of information on the Nonbanking and 4(k) schedules when a respondent utilizes 4(k) authority to acquire a going concern or establish a de novo company without engaging in a 4(k) activity that is new to the respondent's organization. To address the comments, the Federal Reserve will clarify the instructions and delete two event types from the 4(k) schedule.

Burden Estimate

One large BHC asserted that the Federal Reserve's burden estimate for the FR Y–10 of one hour per response is too low. The Federal Reserve understands that for a large BHC this estimate may appear low. However, the estimate represents an average for all institutions and since the vast majority of respondents are small, the Federal Reserve feels comfortable with the estimate of one hour.

[1] Such as those reportable on the CD–1 (OMB No. 1557–0196) or FR H–6 (OMB No. 7100–0278).

Automation Issues

Several commenters raised concerns with the current FR Y–10 online system used to submit the data electronically. The Federal Reserve has arranged a meeting with the commenters to further understand their concerns and will work with the commenters to resolve the issues.

FR Y–6 Comments

A couple of substantive comments were received regarding the proposal to add a requirement for institutions to verify a list of domestic branches. The Federal Reserve is continuing to evaluate these comments and will address them in a separate **Federal Register** notice in 2007. This requirement will not be implemented effective December 31, 2006, as originally proposed.

FR Y–10S Comments

A commenter requested clarifications to the instructions of Schedule A of the FR Y–10S. Data collected on this schedule currently are used to ensure compliance with the Sarbanes-Oxley Act. The commenter asked whether a report is necessary when (1) a reporter's subsidiary has been dissolved or sold since December 31, 2005, or (2) there has been no change to the information collected on Schedule A since December 31, 2005. The Federal Reserve will clarify the instructions to indicate that the Cover Page and Schedule A of the FR Y–10S reporting form do not need to be filed in either situation.

FR Y–10E Comments

One trade association expressed concern about the FR Y–10E free-form supplement that would be used to collect additional structural information deemed to be critical and needed in an expedited manner. This commenter asked the Federal Reserve to reconsider creating the supplement or to clearly circumscribe the situations under which it would be used. This supplement would only be used to meet new legislative requirements, answer Congressional inquiries, or respond to critical market events that could not be addressed in a timely manner through the reports clearance process. Subsequent to the implementation of this supplement, if the data were needed on a permanent basis, the Federal Reserve would complete the entire clearance process, including a request for public comment.

Board of Governors of the Federal Reserve System, December 22, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–22259 Filed 12–27–06; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 2007.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Dan L. Rorvig, McVille, North Dakota; Teresa L. Rorvig, McVille, North Dakota; Robert J. Fossum, Forest River, North Dakota; and Troy D. Olson, Cooperstown, North Dakota, acting as a group in concert to acquire control of McVille Financial Services, Inc., McVille, North Dakota and thereby indirectly acquire McVille State Bank, McVille, North Dakota.

Board of Governors of the Federal Reserve System, December 22, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–22247 Filed 12–27–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 24, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. BancorpSouth, Inc., Tupelo, Mississippi; to merge with City Bancorp, Inc., Springfield, Missouri; and thereby indirectly acquire The Signature Bank, Springfield, Missouri.

Board of Governors of the Federal Reserve System, December 22, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–22246 Filed 12–27–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Title III and VII State Program Report

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of

Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 29, 2007.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg. Room 10235, 725 17th St. N.W., Washington, DC 20503, Attn:

Carolyn Lovett, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Saadia Greenberg at 202–357–3554 or e-mail: *saadia.greenberg@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

The Older Americans Act (OAA) requires annual program performance reports from States. In compliance with this OAA provision, the State Program Report (SPR) collects information about how State Agencies on Aging expend OAA funds as well as funding from other sources for OAA authorized services. The SPR also collects information on the demographic and functional status of the recipients. This collection was revised in November 2004 (OMB Approval Number 0985–0008). The proposed data collection continuation format remains unchanged from the November 2004 document. It may be found at *http://www.aoa.gov/prof/agingnet/NAPIS/docs/SPR-Modified-Form-11.08.04.pdf.*

AoA estimates the burden of this collection of information as follows: 2,600 hours.

Dated: December 21, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–22273 Filed 12–27–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension of Current Program Announcement and Grant Application Template for Older Americans Act Title IV Discretionary Grants Program

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by January 29, 2007.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 or by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn:

Carolyn Lovett, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Greg Case, (202) 357–3442 or *greg.case@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

AoA is requesting an extension of the currently approved Program Announcement and Application Instructions Template for the Older Americans Act Title IV Discretionary Grants Program. This template provides the requirements and instructions for the submission of an application for discretionary grants funding opportunities. The template may be found on the AoA Web site at *http://www.aoa.gov/doingbus/doingbus.asp.*

AoA estimates the burden of this collection of information as follows:

Frequency: 10—15 Title IV Program Announcements published annually.

Respondents: State agencies, public agencies, private non-profit agencies, institutions of higher education, and organizations including tribal organizations.

Estimated Number of Responses: 300 annually.

Total Estimated Burden Hours: 14,400.

Dated: December 21, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–22276 Filed 12–27–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health (NIOSH); Advisory Board on Radiation and Worker Health (ABRWH) In Accordance With Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention Announces the Following Committee Meeting of the ABRWH:

Time and Date: 11:00 a.m.–5:00 p.m., Eastern Standard Time, Thursday, January 11, 2007.

Place: Audio Conference Call via FTS Conferencing. The USA toll free dial in number is 1.866.643.6504 with a pass code of 9448550.

Status: Open to the public, but without a public comment period.

Background: The Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2007.

Purpose: The Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, provide advice on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the meeting includes SEC Petitions for Monsanto and General Atomics; Update on Rocky Flats SEC Working Group activities; Working Group/Subcommittee Updates; Individual Dose Reconstruction Reviews;

future Plans and meetings; conflict of interest issues; and Board working time.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Due to programmatic matters, this **Federal Register** Notice is being published on less than 15 days notice to the public (41 CFR 102–3.150(b)).

FOR FURTHER INFORMATION CONTACT: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513.533.6825, Fax 513.533.6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–22380 Filed 12–27–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Medicare & Medicaid Services

Privacy Act of 1974; CMS Computer Match No. 2006–06, HHS Computer Match No. 0603

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

ACTION: Notice of Computer Matching Program (CMP).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces the establishment of a CMP that CMS plans to conduct with various Participating States. We have provided information about the matching program in the ''Supplementary Information'' section below. The Privacy Act provides an opportunity for interested persons to comment on the matching program. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation. See ''Effective Dates'' section below for comment period.

DATES: *Effective Dates:* CMS filed a report of the CMP with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 20, 2006. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication in the **Federal Register**, whichever is later. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: CMS Privacy Officer, Division of Privacy Compliance, Enterprise Architecture and Strategy Group, Office of Information Services, CMS, Mail-stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Lourdes Grindal Miller, Health Insurance Specialist, Program Integrity Group, Office of Financial Management, CMS, Mail-stop C3–02–16, 7500 Security Boulevard, Baltimore Maryland 21244–1850. The telephone number is 410–786–1022 and e-mail is *Lourdes.grindalmiller@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits.

Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;
2. Obtain the Data Integrity Board approval of the match agreements;
3. Furnish detailed reports about matching programs to Congress and OMB;
4. Notify applicants and beneficiaries that the records are subject to matching; and,
5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: December 19, 2006.

John R. Dyer,

Chief Operating Officer, Centers for Medicare & Medicaid Service.

CMS Computer Match No. 2006–06
HHS Computer Match No. 0603

NAME:

''Computer Matching Agreement (CMA) Between the Centers for Medicare & Medicaid Services (CMS) and Participating States for the Disclosure of Medicare and Medicaid Information.''

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services (CMS).

All Participating States, the District of Columbia, and the territories of Guam, Puerto Rico, American Samoa, and the Virgin Islands.

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) 552a), as amended, (as amended by Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988), the Office of Management and Budget (OMB) Circular A–130, titled ''Management of Federal Information Resources'' at 65 **Federal Register** (FR) 77677 (December 12, 2000), 61 FR 6435 (February 20, 1996), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

This Agreement provides for information matching fully consistent with the authority of the Secretary of the Department of Health and Human Services (HHS) (the Secretary). Sections 1816 and 1842 of the Social Security Act (the Act) permits the Secretary to make audits of the records of providers as necessary to insure that proper

payments are made, to assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits, and to perform other functions as are necessary (Pub. L. 108–173 section 911, amending Title XVIII, section 1874A (42 U.S.C. 1395kk–1).

Section 1857 of the Act provides that the Secretary, or any person or organization designated by the Secretary shall have the right to ''inspect or otherwise evaluate (i) the quality, appropriateness, and timeliness of services performed under the contract'' (42 U.S.C. 1395w–27(d)(2)(A)); and ''audit and inspect any books and records of [a Medicare Advantage] organization that pertain to services performed or determinations of amounts payable under the contract.'' (42 U.S.C. 1395w–27(d) (2) (B)).

Furthermore, § 1874(b) of the Act authorizes the Secretary to ''contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under Subchapter XVIII.'' (42 U.S.C. 1395kk(b).)

Section 1893 of the Act establishes the Medicare Integrity Program, under which the Secretary may contract with eligible entities to conduct a variety of program safeguard activities, including fraud review employing equipment and software technologies that surpass existing capabilities (42 U.S.C. 1395ddd)). These entities are called Program Safeguards Contractors (PSC) and Medicare Drug Integrity Contractors (MEDIC).

Pursuant to the applicable state statutes and guidelines for the Participating State charged with the administration of the Medicaid program, disclosure of the Medicaid data pursuant to this Agreement is for purposes directly connected with the administration of the Medicaid program, in compliance with 42 CFR 431.300 through 431.307. Those purposes include the detection, prosecution, and deterrence of fraud, waste and abuse (FW&A) in the Medicaid program.

PURPOSE (S) OF THE MATCHING PROGRAM:

The purpose of this Agreement is to establish the conditions, safeguards, and procedures under which CMS will conduct a computer matching program with Participating States to study claims, billing, and eligibility information to detect suspected instances of Medicare and Medicaid FW&A. CMS and the Participating State will provide a CMS contractor (hereinafter referred to as the ''Custodian'') with Medicare and Medicaid records pertaining to eligibility, claims, and billing which the Custodian will match in order to merge the information as necessary to conduct the match. Utilizing fraud detection software, the information will then be used to identify patterns of aberrant practices and abnormal patterns requiring further investigation. Aberrant practices and abnormal patterns identified in this matching program that constitute FW&A will involve individuals who are practitioners, providers and suppliers of services, Medicare beneficiaries, Medicaid recipients, and other individuals whose information may be maintained in the records.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

This computer matching program (CMP) will enhance the ability of CMS and Participating States to detect FW&A by matching claims data, eligibility, and practitioner, provider, and supplier enrollment records of Medicare beneficiaries, practitioners, providers, and suppliers in the Participating State against records of Medicaid recipients, practitioners, providers, and suppliers in the Participating State.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

National Claims History (NCH), System No. 09–70–0005 was published at 71 FR 67137 (November 20, 2006).

Medicare Multi-Carrier Claims System (MCS) (formerly published as the Carrier Medicare Claims Record (CMCR)), System No. 09–70–0501 was published at 71 FR 64968 (November 6, 2006).

Enrollment Database (EDB), System No. 09–70–0502 was published at 67 FR 3203 (January 23, 2002).

Fiscal Intermediary Shared System (FISS) (formerly published as the Intermediary Medicare Claims Record (IMCR), System No. 09–70–0503 was published at 71 FR 64961 (November 6, 2006).

Unique Physician/Provider Identification Number (UPIN), System No. 09–70–0525, was published at 71 FR 66535 (November 15, 2006).

Medicare Supplier Identification File (MSIF), System No. 09–70–0530 was published at 71 FR 70404 (December 4, 2006).

Provider Enrollment Chain and Ownership System (PECOS), System No. 09–70–0532 was published at 71 FR 60536 (October 13, 2006).

Medicare Beneficiary Database (MBD), System No. 09–70–0536 was published at 71 FR 70396 (December 4, 2006).

Medicare Drug Data Processing System (DDPS), System No. 09–70–0553 was published at 70 FR 58436 (October 6, 2005).

Medicare Advantage Prescription Drug (MARx) System, System No. 09–70–4001 was published at 70 FR 60530 (October 18, 2005).

The records files that will be made available for this matching program by the Participating State include utilization, entitlement, and provider records.

INCLUSIVE DATES OF THE MATCH:

The CMP shall become effective 40 days after the report of the matching program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. E6–22253 Filed 12–27–06; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Submission of Information Collection to the Office of Management and Budget

AGENCIES: Bureau of Indian Affairs, Interior and Indian Health Services, Health and Human Services.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs and Indian Health Service are submitting the information collection, titled ''Indian Self-Determination and Education Assistance Act Programs, 25 CFR 900'' to the Office of Management and Budget for renewal. The information collection, OMB Control #1076–0136, is used to process contracts, grants or cooperative agreements for award by the Bureau of Indian Affairs and the Indian Health Service as authorized by the Indian Self-Determination and Education Assistance Act, as amended. The Department of the Interior and the Department of Health and Human Services invite you to submit comments to the OMB on the information collection described below.

DATES: Interested persons are invited to submit comments on or before January 29, 2007.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for Department of the Interior, by facsimile at (202) 395–6566 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov*.

Please send a copy of your comments to Terry Parks, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW., Mail Stop 4513–MIB, Washington, DC 20240. You may telefax comments on this information collection to (202) 208–5113. You may also hand deliver written comments or view comments at the same address.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collection request submission from Terry Parks, (202) 513–7625.

SUPPLEMENTARY INFORMATION: Representatives of the Department of the Interior and the Department of Health and Human Services and Tribes developed a joint rule, 25 CFR Part 900, to implement section 107 of the Indian Self-Determination and Education Assistance Act, as amended, Title I, Public Law 103–413, the Indian Self-Determination Contract Reform Act of 1994. Section 107(a)(2)(A)(ii) of the Indian Self-Determination Contract Reform Act requires the joint rule to permit contracts and grants be awarded to Indian tribes without the unnecessary burden or confusion associated with two sets of rules and information collection requirements when legislation treats this as a single program covering two separate agencies. The Bureau of Indian Affairs and the Indian Health Service estimate that the base burden hours established for this Information Collection Request, OMB 1076–0136, will remain the same. The number of base burden hours established for information collection requirements of 25 CFR Part 900 remained stationary even though some tribes are contracting under 25 CFR 900.8 which permits tribes to contract several programs under a single contract. The complexity of the reports has offset the contracting multiple programs burden hours, therefore the burden hours estimates have remained stationary.

The information requirements for this joint rule represent significant differences from other agencies in several respects. Both the Bureau of Indian Affairs and the Indian Health Service let contracts for multiple programs whereas other agencies usually award single grants to tribes. Under the Indian Self-Determination and Education Assistance Act, as amended, and the Indian Self-Determination Contract Reform Act of 1994, tribes are entitled to contract and may renew contracts annually where other agencies provide grants on a discretionary/competitive basis.

The proposal and other supporting documentation identified in this information collection is used by the Department of the Interior and the Department of Health and Human Services to determine applicant eligibility, evaluate applicant capabilities, protect the service population, safeguard Federal funds and other resources, and permit the Federal agencies to administer and evaluate contract programs. Tribal governments or tribal organizations provide the information by submitting Public Law 93–638 contract or grant proposals to the appropriate Federal agency. No third party notification or public disclosure burden is associated with this collection.

Request for Comments

The Bureau of Indian Affairs and Indian Health Service requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section.

Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of the agencies' estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor nor request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

OMB Control Number: 1076–0136.

Title: Indian Self-Determination and Education Assistance Contracts, 25 CFR 900.

Brief Description of collection: A tribe or tribal organization may be required to respond from 1 to 12 times per year, depending upon the number of programs they contract from the Bureau of Indian Affairs and Indian Health Service. Each response may vary in its length. In addition, each subpart concerns different parts of the contracting process. For example, Subpart C relates to provisions of the contents for the initial contract proposal. The burden associated with this would not be used when contracts are renewed. Subpart F describes minimum standards for the management systems used by Indian tribes or tribal organizations under these contracts. Subpart G addresses the negotiability of all reporting and data requirements in the contract.

Type of review: Renewal.

Respondents: 550.

Total number of responses: 5267.

Time per response: Varies from 10 to 50 hours, with an average of 45 hours per response.

Total Annual burden to Respondents: 219,782 hours.

Dated: December 21, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary-Indian Affairs, Department of the Interior.

Dated: October 25, 2006.

Robert G. McSwain,

Deputy Director, Indian Health Service, Department of Health and Human Services.

[FR Doc. 06–9907 Filed 12–27–06; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting 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 Director's Consumer Liaison Group.

Date: January 25, 2007.

Time: 1 p.m. 2:30 p.m.

Agenda: (1) Approval Minutes of September 28, 2006 Teleconference and October 25, 2006 in-person meeting; (2) Introduce new Office of Advocacy Relations leadership and Director's charge to the DCLG members (3) Report of DCLG Member Activities; (4) Preparation for the March in-person meeting; (5) Public Comment Public Comment; (6) Action Items and Conclusion.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Barbara Guest, Executive Secretary, Office of Liaison Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2202, Bethesda, MD 20892–8324, 301–496–0307, *guestb@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/dclg/dclg.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: December 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9884 Filed 12–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 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 Cancer Institute Special Emphasis Panel, SBIR Topic 230 (Phases I and II).

Date: February 27, 2007.

Time: 12 pm to 4 pm.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6130 Executive Blvd., Conference Room D, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kenneth L Bielat, PhD., Scientific Review Administrator, Division Of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301)496–7576, *bielatk@nih.gov*.

(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: December 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9886 Filed 12–2–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, February 13, 2007, 8:00 a.m. to February 15, 2007, 5 p.m., Hyatt Regency bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on November 30, 2006, 71 FR 69211.

The meeting notice is changed to reflect the name of the committee from ''SPORE II'' to ''SPORE in Prostate, Breast and Skin Cancer.'' The meeting is closed to the public.

Dated: December 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9888 Filed 12–28–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Purusant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: January 25, 2007.

Open: 8:00 a.m. to 12:15 p.m.

Agenda: (1) A report by the Director, NICHD; (2) a report of the Subcommittee on Planning and Policy; (3) a Reproductive Sciences Branch Presentation; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Contact Person: Yvonne T. Maddox, PhD., Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848.

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.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: www.nichd.nih.gov/about/nachhd.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 19, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9885 Filed 12–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel, Mentored Research Scientist Development Award.

Date: January 5, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:*Sathasiva B. Kandasamy, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@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 Child Health and Human Development Special Emphasis Panel, Mentored Patient-Oriented Research Career Development Award.

Date: January 11, 2007.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

*Contact Person:*Sathasiva B. Kandasamy, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: December 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9889 Filed 12–27–06; 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 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: Center for Scientific Review Special Emphasis Panel, Drug Discovery.

Date: January 3, 2007.

Time: 3 p.m. to 6 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: Mary Custer, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@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: Immunology Integrated Review Group, Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: January 24–25, 2007.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Clearwater Central, 20967 US Highway 19 North, Clearwater, FL 33765.

Contact Person: Cathleen L. Cooper, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Psychopharmacology.

Date: January 24–25, 2007.

*Time:*9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Christine L. Melchior, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge

Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1713, *melchioc@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biodata Management and Analysis Study Section.

Date: January 29, 2007.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard San Francisco Downtown, 299 Second Street, San Francisco, CA 94105.

Contact Person: Marc Rigas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, 301–402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Non-Viral Systems for Gene Transfer.

Date: January 29, 2007.

Time: 9:00 a.m. to 4:00 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: Richard Panniers, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR06–293 Quick Trial on Imaging and Image-guided Intervention.

Date: February 2, 2007.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurotoxicology and Alcohol Study Section.

Date: February 7–8, 2007.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Hotel, 1550 Court Place,, Denver, CO 80202.

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–435–2212, *josephru@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section.

Date: February 7, 2007.

Time: 8:00 a.m. to 5:00 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: Michael Selmanoff, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892–7844, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neuroendocrinology, Neuroimmunology, and Behavior Study Section.

Date: February 8–9, 2007.

Time: 8 a.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: Michael Selmanoff, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3134, MSC 7844, Bethesda, MD 20892, 301–435–1119, *mselmanoff@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Clinical and Integrative Cardiovascular Sciences Study Section.

Date: February 8–9, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 1177 15th Street, NW., Washington, DC 20005.

Contact Person: Russell T. Dowell, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Synapses, Cytoskeleton and Trafficking Study Section.

Date: February 8–9, 2007.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Jonathan K. Ivins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 4040A, MSC 7806, Bethesda, MD 20892, (301) 594–1245, *uvubsh@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics B Study Section.

Date: February 8–9, 2007.

*Time:*8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact: Richard a. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—2 Study Section.

Date: February 8–9, 2007.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Neelakanta Ravindranath, PhD., MVSC., Scientific Review Administration, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034, *ravindrn@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group, Community Influences on Health Behavior.

Date: February 8–9, 2007.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW, Washington, DC 20005.

Contact Person: Ellen K. Schwartz, Edd., Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetics of Health and Disease Study Section.

Date: February 12–13, 2007

Time: 9 am to 2:30 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Cheryl M. Corsaro, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD20892, (301) 435–1045, *corsaroc@nih.gov*.

Name of Committee: Respiratory Sciences Integrated Review Group, Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 15–16, 2007.

Time: 8 am. to 3 pm.

Agenda: To review and evaluate grant applications.

Place: M Street Hotel, 1143 New Hampshire Ave., NW, Washington, DC 20037.

Contact Person: George M. Barnas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2810, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mosquito Vectors.

Date: February 15, 2007.

Time: 1 pm. to 4 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Fouad A. El-Zaatari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies R03s, R15s, and R21s.

Date: February 16 2007.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Marina Del Rey Hotel, 13534 Bali Way, Marina Del Rey, CA 90292.

Contact Person: Valerie Durrant, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3418, MSC 7770, Bethesda, MD 20892. (301) 435–3554, *durrantv@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: December 20, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–9887 Filed 12–27–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Convection Enhanced Delivery and Tracking of Gadolinium Conjugated Therapeutic Agents to the Central Nervous System

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive worldwide license to practice the invention embodied in: HHS. Ref. No. E–202–2002 ''Method for Convection Enhanced Delivery of Therapeutic Agents,'' Provisional Patent Application, 60/413,673; International Patent Application PCT/US03/30155, U.S. Patent Application Serial No. 10/528,310; European Patent Application Serial No. 03756863.1; Australian Patent Application No. 2003299140; Canadian Patent Application No. 2,499,573; and HHS Ref. No. E–206–2000/0 and /1 ''Method for Increasing the Distribution of Therapeutic Agents;'' and ''Method for Increasing the Distribution of Nucleic Acids;'' Provisional Patent Application 60/250,286; Provisional Patent Application No. 60/286,308; U.S. Patent Application No. 09/999,203; U.S. Patent Application No. 10/132,681; and Canadian Patent Application No. 2327208, to Medtronic Neurological, a Division of the Medtronic Corporation, having its headquarters in Minneapolis, Minnesota. The United States of America is the assignee of the patent rights of the above invention. The contemplated exclusive license may be granted in a field of use limited to the development and sales of a clinical grade surrogate tracer for tracking the distribution of convection enhanced delivered central nervous system therapeutics, excluding lipid based systems.

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before February 26, 2007 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; E-mail: *shmilovm@mail.nih.gov*. A signed confidentiality nondisclosure agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The patent applications intended for licensure disclose and/or cover the following:

E–202–2002 ''Method for Convection Enhanced Delivery of Therapeutic Agents''

The invention is a method for monitoring the spatial distribution of therapeutic substances by MRI or CT that have been administered to tissue using convection enhanced delivery, a technique that is the subject of NIH-owned U.S. Patent No. 5,720,720. In one embodiment, the tracer is a molecule, detectable by MRI or CT, which functions as a surrogate for the motion of the therapeutic agent through the solid tissue. In other particular embodiments, the tracer is the therapeutic agent conjugated to an imaging moiety. The method of this invention uses non-toxic macromolecular MRI contrast agents comprised of chelated Gd(III). In particular, the surrogate tracer used in this invention is a serum albumin conjugated with either a gadolinium chelate of 2-(p-isothiocyanotobenzyl)-6-methyldiethylenetriamine pentaacetic acid or with iopanoic acid. These macromolecular imaging agents have clearance properties that mimic the pharmacokinetic properties of co-administrated drugs, so as to be useful in quantifying the range and dosage level of therapeutic drugs using MR imaging.

E–206–2000 ''Method for increasing the distribution of therapeutic agents;'' ''Method for increasing the distribution of nucleic acids''

The invention pertains to the reliance of therapies on the local parenchymal delivery of macromolecules or nucleic acids for success. However, the volume of distribution of many of these potential therapeutic agents is restricted by their interactions with the extracellular matrix and cellular receptors. Heparin-sulfate proteoglycans

are cell surface components which bind to an array of molecules such as growth factors, cytokines and chemokines and viruses such as cytomegalovirus, herpes simplex virus and HIV. The invention provides a method of dramatically increasing the volume of distribution and effectiveness of certain therapeutic agents after local delivery by the use of facilitating agents as described in Neuroreport. 2001 Jul 3;12(9):1961–4 entitled ''Convection enhanced delivery of AAV–2 combined with heparin increases TK gene transfer in the rat brain'' and in Exp Neurol. 2001 Mar;168(1):155–61 entitled ''Heparin coinfusion during convection-enhanced delivery (CED) increases the distribution of the glial-derived neurotrophic factor (GDNF) ligand family in rat striatum and enhances the pharmacological activity of neurturin.'' These methods are especially useful when used in conjunction with technology described and claimed in the convection enhanced delivery technology claimed in U.S. Patent 5,720,720.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: December 20, 2006.

Steven M. Ferguson

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E6–22187 Filed 12–27–06; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting/Conference Call, Board of Visitors for the National Fire Academy

AGENCY: U.S. Fire Administration, Federal Emergency Management Agency, DHS.

ACTION: Notice of open meeting via conference call.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Federal Emergency Management Agency announces the following committee meeting:

Name: Board of Visitors (BOV) for the National Fire Academy.

Date of Meeting: January 18, 2007.

Place: Building H, Room 300, National Emergency Training Center, Emmitsburg, Maryland.

Time: 1:30–3:30 p.m.

Proposed Agenda: Review National Fire Academy Program Activities.

SUPPLEMENTARY INFORMATION: In accordance with section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, the Federal Emergency Management Agency announces that the committee meeting will be open to the public in the Emmitsburg commuting area with seating available on a first-come, first-served basis. The meeting is open to the public; however, teleconference lines are limited. Members of the general public who plan to participate in the meeting should contact the Office of the Superintendent, National Fire Academy, U.S. Fire Administration, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1117, on or before January 16, 2007. Dial-in information will be provided to those wishing to participate via telephone.

Minutes of the meeting will be prepared and will be available for public viewing in the Office of the U.S. Fire Administrator, U.S. Fire Administration, Federal Emergency Management Agency, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request within 60 days after the meeting.

The National Fire Academy Board of Visitors is administered by the U.S. Fire Administration, which is currently part of the Preparedness Directorate of the Department of Homeland Security. In the near future, the U.S. Fire Administration will be transferred to the Federal Emergency Management Agency, also part of the Department of Homeland Security. During this transition, the Federal Emergency Management Agency will continue to support this program.

Dated: December 21, 2006.

Charlie Dickinson,

Acting U.S. Fire Administrator.

[FR Doc. E6–22301 Filed 12–27–06; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5037–N–99]

Notice of Submission of Proposed Information Collection to OMB; Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Data are collected on a sample of households receiving HUD housing assistance subsidies. These households are interviewed and their incomes verified to determine if subsidies are correctly calculated. The study identifies the costs and types of errors. The results are used to target corrective actions and measure the impact of past corrective actions.

DATES: *Comments Due Date:* January 29, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0203) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Quality Control For Rental Assistance Subsidy Determinations.

OMB Approval Number: 2528–0203.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: Data are collected on a sample of households receiving HUD housing assistance subsidies. These households are interviewed and their incomes verified to determine if subsidies are correctly calculated. The study identifies the costs and types of errors. The results are used to target corrective actions and measure the impact of past corrective actions.

Frequency of Submission: On Occasion, Annually.

	Number of respondents	Annual responses	X	Hours per response	=	Burden hours
Reporting Burden:	2950	1		0.80		2367

Total Estimated Burden Hours: 2367.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 22, 2006.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E6–22251 Filed 12–27–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Comprehensive Conservation Plan and Environmental Assessment for Moosehorn National Wildlife Refuge, Washington County, ME

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: Intent to prepare a Comprehensive Conservation Plan and Environmental Assessment.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for Moosehorn National Wildlife Refuge (NWR). This notice advises the public that the Service intends to gather information necessary for preparing the CCP and EA pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969. The Service is furnishing this notice in compliance with Service planning policy, to (1) advise other Federal and State agencies and the public of our intention to conduct detailed planning on this refuge; and, (2) obtain suggestions and information on the scope of issues to include in the environmental document.

The Service will involve the public through open houses, informational and technical meetings, and written comments. Special mailings, newspaper articles, Web sites, and announcements will provide information about opportunities for public involvement in the planning process.

DATES: We are planning to begin public scoping meetings in March 2007. We will announce their locations, dates, and times at least 2 weeks in advance, in special mailings and local newspaper notices, on our Web site, and through personal contacts.

ADDRESSES: Moosehorn NWR, 103 Headquarters Road, Suite 1, Baring, ME 04694, at 207–454–7161 (telephone); 207–454–2550 (FAX); *fw5rw_mhnwr@fws.gov* (e-mail); *http://www.fws.gov/northeast/moosehorn/* (Web site).

FOR FURTHER INFORMATION, CONTACT: Nancy McGarigal, Refuge Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035; 413–253–8562 (telephone); 413–253–8468 (FAX); e-mail *northeastplanning@fws.gov*.

SUPPLEMENTARY INFORMATION: Under the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee), the Service is to manage all lands in the National Wildlife Refuge System (NWRS) in accordance with an approved CCP. The plan guides management decisions and identifies refuge goals, management objectives, and strategies for achieving refuge purposes over a 15-year period.

The planning process will cover many elements, including wildlife and habitat management, visitor and recreational activities, wilderness area management, cultural resource protection, and facilities and infrastructure. Compatibility determinations will be completed for all applicable refuge uses. We will also conduct a wilderness review on refuge fee lands not currently designated as wilderness and a wild and scenic rivers evaluation to determine whether any areas on the refuge qualify for those Federal designations.

Public input into the planning process is essential. The comments we receive will help identify key issues and refine our goals and objectives for managing refuge resources and visitors. Additional opportunities for public participation will arise throughout the planning process, which we expect to complete by September 2008. We are presently summarizing refuge data and collecting other resource information to provide us a scientific basis for our resource decisions. We will prepare the EA in accordance with the Council on Environmental Quality procedures for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

The 28,885-acre Moosehorn NWR, established in 1937, is one of the oldest refuges in the NWRS. Its purposes are to conserve and protect fish and wildlife resources, including endangered and threatened species, and to protect its wetlands and wilderness resources. The refuge headquarters is located in the town of Baring, Maine. The refuge's two divisions include the 20,131-acre Baring

Division, which borders the St. Croix River and Canada, and the 8,754-acre Edmunds Division, located along Cobscook Bay. Within the existing refuge boundary, 7,462 acres (30 percent) are designated part of the National Wilderness Preservation System.

Land cover on the refuge includes approximately 15 percent in wetlands and 85 percent in uplands. Generally, refuge lands are characterized by rolling hills, large rock outcrops, scattered boulders, second-growth northern hardwood-conifer forest, and some pockets of pure spruce-fir. Numerous streams, beaver flowages, bogs, marshes, and scrub-shrub and forested wetlands are imbedded within the forested landscape.

We estimate that 54,000 refuge visitors annually engage in hunting, fishing, wildlife observation and photography, and/or interpretation. Over 65 miles of trails and roads closed to vehicular traffic provide access for these activities on refuge lands. Special events, environmental education and interpretive programs and self-guided interpretive trails, observation platforms, and photography blinds enhance visitor experiences.

Dated: November 9, 2006.

Richard O. Bennett,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. E6–22285 Filed 12–27–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization to Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972 (MMPA) as amended, notice is hereby given that Letters of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska have been issued.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Perham at the Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION: A Letter of Authorization has been issued to the following companies in accordance with Fish and Wildlife Service Federal Rules and Regulations (see ''Marine Mammals; Incidental Take During Specified Activities'' at 71 FR 43926; August 2, 2006) under section 101(a)(5)(A) of the MMPA and the Fish and Wildlife Service implementing regulations at 50 CFR 18.27(f)(3):

Company	Activity	Location	Date issued
Shell Offshore, Inc.	Exploration	Open water seismic	Aug 15, 2006
BP Exploration Alaska, Inc.	Production	Greater Prudhoe Bay, Milne Point, Badami, Endicott, and Northstar Oil Field Units.	Aug 15, 2006
ConocoPhillips Alaska, Inc	Production	Kuparuk and Alpine Oil Field Units	Aug 15, 2006
FEX L.P.	Exploration	NPR–A	Sept 26, 2006
Ukpeagvik Inupiat Corporation	Development	Cape Simpson Industrial Port	Sept 22, 2006
ConocoPhillips Alaska, Inc	Exploration	Pike Shallow Hazard Survey	Sept 26, 2006

Dated: October 19, 2006.

Thomas O. Melius,

Regional Director.

[FR Doc. E6–22277 Filed 12–27–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Preassessment Screen

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI) as a natural resource trustee, announces the release to the public of the Natural Resource Damages Preassessment Screen for Onondaga Lake, Onondaga County, New York.

Federal regulations at 43 CFR 11.23(a) require Natural Resource Trustees to complete a preassessment screen (PAS) and make a determination as to whether a Natural Resources Damages Assessment (NRDA) shall be carried out at a site, before assessment efforts are undertaken under the regulations. The Onondaga Lake PAS document fulfills that requirement for the Onondaga Lake Superfund Site and follows the structure of Federal Regulations at 43 CFR part 11.

The purpose of the PAS is to provide a rapid review of the readily available information on releases of hazardous substances and potential impacts on natural resources in Onondaga Lake and sub-sites for which the DOI may assert trusteeship under section 107(f) of CERCLA.

ADDRESSES: Requests for copies of the PAS may be made to: U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, NY 13045. The public is also invited to view copies of the PAS at the Service's New York Field Office at 3817 Luker Road, Cortland, NY 13045.

Additionally, the PAS will be available for viewing at the following Web site link: *http://www.fws.gov/northeast/nyfo/ec/OnondagaLakePAS.pdf.*

FOR FURTHER INFORMATION CONTACT: Ken Karwowski, at address under **ADDRESSES**, by phone at 607–753–9334 or by e-mail at *Ken_Karwowski@fws.gov*.

SUPPLEMENTARY INFORMATION: The PAS is being released in accordance with the CERCLA of 1980 as amended, commonly known as Superfund (42 U.S.C. 9601 *et seq.*), the Natural Resource Damage Assessment Regulations found at 43 CFR part 11, and the National Environmental Policy Act.

Author: The primary author of this notice is Ken Karwowski, U.S. Fish and Wildlife Service, New York Field Office, 3817 Luker Road, Cortland, NY 13045.

Authority: The authority for this action is the CERCLA of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*), and the Natural Resource Damage Assessment Regulations found at 43 CFR part 11.

Dated: October 24, 2006.

Richard O. Bennett,

Acting Regional Director Region 5, U.S. Fish and Wildlife Service, DOI Designated Authorized Official, U.S. Department of the Interior.

[FR Doc. E6–22287 Filed 12–27–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget (OMB) for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Request for the Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State courts has been submitted to OMB for review and renewal. This information collection is cleared under OMB Control Number 1076–0111 through December 31, 2006.

DATES: Written comments must be submitted on or before January 29, 2007.

ADDRESSES: Comments should be submitted to the Desk Officer for the Department of the Interior, Office of Management and Budget, either by facsimile at (202) 395–6566, or you may send an e-mail to *OIRA DOCKET@omb.eop.gov*.

Please send a copy of your comments to Stephanie Birdwell, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Stephanie Birdwell (202) 513–7607.

SUPPLEMENTARY INFORMATION:

I. Abstract

A State court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a State court may send written notice to the Bureau of Indian Affairs (Bureau) when appointment of counsel is not authorized by State law. The cognizant Bureau Regional Director uses this information to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act, Public Law 95–608.

The Bureau of Indian Affairs published a notice in the **Federal Register** on July 11, 2006, (71 FR 39926) requesting public comments on the proposed information collection. The comment period ended September 11, 2006. No comments were received.

II. Method of Collection

The following information is collected from State courts in order to certify payment of appointed counsel in involuntary Indian child custody proceedings. The information collection is submitted to obtain or retain a benefit; *i.e.*, payment for appointed counsel. The reasons for the collection are listed in the following table:

Information collected	Reason for Collection
(a) Name, address and telephone number of attorney appointed;	(a) To identify attorney appointed as counsel and method of contact;
(b) Name and address of client for whom counsel is appointed;	(b) To identify indigent party in an Indian child custody proceeding for whom counsel is appointed;
(c) Applicant's relationship to child;	(c) To determine if the person is eligible for payment of attorney fees as specified in Public Law 95–608;
(d) Name of Indian child's tribe;	(d) To determine if the child is a member of a federally recognized tribe and is covered by the Indian Child Welfare Act (ICWA);
(e) Copy of petition or complaint;	(e) To determine if this custody proceeding is covered by the ICWA;
(f) Certification by the court that State law does not provide for appointment of counsel in such proceedings;.	(f) To determine if other State laws provide for such appointment of counsel and to prevent duplication of effort;
(g) Certification by the court that the Indian client is indigent;	(g) To determine if the client has resources to pay for counsel;
(h) The amount of payments due counsel utilizing the same procedures used to determine expenses in juvenile delinquency proceedings;.	(h) To determine if the amount of payment due appointed counsel is based on State court standards in juvenile delinquency proceedings;
(i) Approved vouchers with court certification that the amount requested is reasonable considering the work and the criteria used for determining fees and expenses for juvenile delinquency proceedings..	(i) To determine the amount of payment considered reasonable in accordance with State standards for a particular case.

Proposed use of the information: The information collected will be used by the respective Bureau Regional Director to determine:

(a) If an individual Indian involved in an Indian child custody proceeding is eligible for payment of appointed counsel's attorney fees;

(b) If any State statutes provide for coverage of attorney fees under these circumstances;

(c) The State standards for payment of attorney fees in juvenile delinquency proceedings; and,

(d) The name of the attorney, and his actual voucher certified by the court for the work completed on a pre-approved case. This information is required for payment of appointed counsel as authorized by Public Law 95–608.

III. Data

(1) *Title of the Collection of Information:* The Department of the Interior, Bureau of Indian Affairs, Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, 25 CFR 23.13.

OMB Control Number: 1076–0111.

Type of Review: Extension of a currently-approved collection.

Affected Entities: State courts and individual Indians eligible for payment of attorney fees pursuant to 25 CFR 23.13 in order to obtain a benefit.

Estimated number of respondents: 1.

Proposed frequency of response: 1.

(2) *Estimate of total annual reporting and record keeping burden that will result from the collection of this information:* 9 hours.

Reporting: 8 hours per response x 1 respondent = 8 hours.

Recordkeeping: 1 hour per response x 1 respondent = 1 hour.

Estimated Total Annual Burden Hours: 9 hours.

(3) *Description of the need for the information and proposed use of the information:* Submission of this information is required in order to receive payment for appointed counsel under 25 CFR 23.13. The information is collected to determine applicant eligibility for services.

IV. Request for Comments

The Bureau of Indian Affairs invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden (including hours and cost) 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 collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

The comments, names and addresses of commenters will be available for public view during regular business hours. If you wish us to withhold this information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law.

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 Office of Management and Budget control number.

Dated: December 22, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E6–22265 Filed 12–27–06; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–079–07–1010–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The next two regular meetings of the Western Montana RAC will be held February 21, 2007 at the Butte Field Office, 106 N. Parkmont, Butte, Montana and May 16, 2007 at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana beginning at 9 a.m. The public comment period for both meetings will begin at 11:30 a.m. and the meetings are expected to adjourn at approximately 3 p.m.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the February 21 meeting, topics we plan to discuss include: a presentation and discussion on recreation fees for the Forest Service and BLM, an update on the Butte Resource Management Plan, and a presentation on the Energy Corridor EIS for federal lands in the West. Topics for the May 16 meeting will be determined at the February meeting.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Dated: December 21, 2006.

Richard M. Hotaling,

Field Manager.

[FR Doc. E6–22286 Filed 12–27–06; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–327, 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

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on cut-to-length carbon steel plate from Belgium, Brazil, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and the United Kingdom, and the antidumping finding on cut-to-length carbon steel plate from Taiwan, as well as revocation of countervailing duty orders on cut-to-length carbon steel plate from Belgium, Brazil, Mexico, Spain, and Sweden, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

The Commission further determines that revocation of the antidumping duty orders on corrosion-resistant steel from Germany and Korea and the countervailing duty order on corrosion-resistant steel from Korea would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. Finally, the Commission determines that revocation of the antidumping duty orders on corrosion-resistant steel from Australia, Canada, France, and Japan, as well as the countervailing duty order on corrosion-resistant steel from France, would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Charlotte R. Lane and Stephen Koplan dissenting with respect to corrosion-resistant steel from Australia, Canada, France, and Japan.

Background

The Commission instituted these reviews on November 1, 2005 (70 FR 62324, October 31, 2005), and determined on February 6, 2006, that it would conduct full reviews (70 FR 8874, February 21, 2006). Notice of the scheduling of the Commission's reviews and of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 30, 2006 (71 F.R. 16178). The hearings were held in Washington, DC, on October 17 and 19, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission is scheduled to transmit its determinations in these reviews to the Secretary of Commerce on January 17, 2007. The views of the Commission will be contained in USITC Publication 3899 (January 2007), entitled *Certain Carbon Steel Products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom: Investigation Nos. AA1921–197 (Second Review); 701–TA–319, 320, 325–327, 348, and 350 (Second Review); and 731–TA–573, 574, 576, 578, 582–587, 612, and 614–618 (Second Review).*

By order of the Commission.
Issued: December 20, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–22183 Filed 12–27–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–891 (Review)]

Foundry Coke From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on foundry coke from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

Background

The Commission instituted this review on August 1, 2006 (71 FR 43518) and determined on November 6, 2006 that it would conduct an expedited review (71 FR 67161, November 20, 2006).

The Commission transmitted its determination in this review to the Secretary of Commerce on December 20, 2006. The views of the Commission are contained in USITC Publication 3897 (December 2006), entitled *Foundry Coke From China: Investigation No. 731–TA–891 (Review).*

By order of the Commission.
Issued: December 20, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–22181 Filed 12–27–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on December 6, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Society of Mechanical Engineers (''ASME'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since August 25, 2005, ASME has published several standards and initiated several new standards activities within the general nature and scope of ASME's standards development activities, as specified in its original notification. More details regarding these changes can be found at *http://www.asme.org.*

On September 15, 2004, AMSE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **FEDERAL REGISTER** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on August 28, 2006. A notice was published in the **FEDERAL REGISTER** pursuant to Section 6(b0 of the Act on September 8, 2006 (71 FR 53133).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9911 Filed 12–27–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Applications Work Order Collaboration (AWOC)

Notice is hereby given that, on December 7, 2006, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Applications Work Order Collaboration (''AWOC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: DaimlerChrysler Research and Technology North America, Inc., Palo Alto, CA; Delphi Automotive Systems, LLC, Troy, MI; Ford Motor Co., Dearborn, MI; Mark IV, IVHS, Inc., Flemington, NJ; NAVTEQ North America, LLC, Chicago, IL; and Raytheon Co., Fullerton, CA. The general area of AWOC's planned activity is the development of specified applications to be integrated into the vehicle infrastructure integration system, a national infrastructure to enable data collection and exchange in real time between vehicles and vehicles and the roadway.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–9910 Filed 12–27–06; 8:45 am]

BILLING CODE 4410–11—M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

December 21, 2006.

The Department of Labor (DOL) has submitted the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Request for Employment Information.

OMB Number: 1215–0105.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Private Sector: Business and other for-profit.

Estimated Number of Respondents: 500.

Estimated Number of Annual Responses: 500.

Estimated Average Response Time: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $210.

Description: This information collection is used to collect information about a claimant's employment. It is necessary to determine continued eligibility for compensation payments under the Federal Employees' Compensation Act (5 U.S.C. 8106).

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Claim for Medical Reimbursement Form.

OMB Number: 1215–0193.

Frequency: On occasion and Annually.

Type of Response: Reporting.

Affected Public: Individuals or households.

Estimated Number of Respondents: 21,396.

Estimated Number of Annual Responses: 85,584.

Estimated Average Response Time: 10 minutes.

Estimated Total Annual Burden Hours: 14,207.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $103,557.

Description: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act, 5 U.S.C. 8101 *et seq.*, the Black Lung Benefits Act, 30 U.S.C. 901 *et seq.*, and the Energy Employees Occupational Illness Compensation Program Act of 2000, 42 U.S.C. 7384 *et seq.* All three statutes require OWCP to pay for covered medical treatment that is provided to beneficiaries, and also to reimburse beneficiaries for any out-of-pocket covered medical expenses they have paid. Form OWCP–915, Claim for Medical Reimbursement Form, is used for this purpose and collects the necessary beneficiary and medical provider data in a standard format. Beneficiaries must also attach billing information prepared by the medical provider (Form OWCP–1500 for professional medical services, Form OWCP–92 for institutional providers and hospitals, or a paper bill for prescription drugs dispensed by a pharmacy) and proof of payment.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E6–22238 Filed 12–27–06; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Fee Adjustment for Testing, Evaluation, and Approval of Mining Products

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of fee adjustment.

SUMMARY: This notice describes MSHA's revised fee schedule for testing, evaluating, and approving mining products as permitted by 30 CFR 5.50. MSHA charges applicants a fee to cover its costs associated with testing and evaluating equipment and materials manufactured for use in the mining industry. MSHA will apply the new fee schedule beginning on January 1, 2007. The new fee schedule is based on MSHA's direct and indirect costs for providing services during fiscal year (FY) 2006.

DATES: This fee schedule is effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT: John P. Faini, Chief, Approval and Certification Center (A&CC), 304–547–2029 or 304–547–0400. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Under 30 CFR 5.50, MSHA may revise the fee schedule for testing, evaluation, and approval of mining products at least once every three years although the fee schedule must remain in effect for at least one year. Further, on August 9, 2005, MSHA published a direct final rule at 70 FR 46336 that modified the requirements in 30 CFR part 5. In addition to updating computation procedures and other changes, the final rule allowed outside organizations to conduct 30 CFR part 15 testing (explosives and sheathed explosive units) on MSHA's behalf, on a fee schedule established by the organization. 70 FR 46336, 46336 (2005).

The last time MSHA revised the fee schedule was on December 30, 2005, which became effective on January 1, 2006. 70 FR 77427. Accordingly, MSHA has revised the fee schedule for 2007

according to the procedures described in the direct final rule published at 70 FR 46336. This notice of fee adjustment does not apply to the 30 CFR part 15 testing exception to the fee schedule described in section 5.30(a) of this Part. In addition, this notice does not apply to travel expenses incurred under this Part. When the nature of the product requires MSHA to test and evaluate the product at a location other than on MSHA premises, MSHA must be reimbursed for the travel, subsistence, and incidental expenses of its representative according to Federal government travel regulations. This reimbursement is in addition to the fees charged for evaluation and testing. A discussion of MSHA's fee computation process for evaluation and testing follows in section II.

II. Fee Computation

MSHA computed the 2007 fees using FY 2006 costs for baseline data. MSHA calculated a weighted-average based on the direct and indirect cost to applicants for testing, evaluation, and approval services rendered during FY 2006. From this average, MSHA computed a single hourly rate, which applies uniformly to all applications for services under this Part.

As a result of this process, MSHA has determined that as of January 1, 2007, the fee will be $80 per hour of services rendered.

III. Applicable Fee

- *Applications postmarked before January 1, 2007:* MSHA will process these applications under the 2006 hourly rate of $71, which was published on December 30, 2005, at 70 FR 77427. This information is also available on MSHA's Web site at *http://www.msha.gov/REGS/FEDREG/NOTICES/2005MISC/05–24691.asp.*
- *Applications postmarked on or after January 1, 2007:* MSHA will publish these applications under the 2007 hourly rate of $80.

Dated: December 21, 2006.

Richard E. Stickler,

Assistant Secretary for Mine Safety and Health.

[FR Doc. E6–22317 Filed 12–27–06; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of two currently approved information collections. The first information collection is the Applicant Background Survey, NA Form 3035, which is used to obtain source of recruitment, ethnicity, race, and disability data on job applicants. The information is used to determine if the recruitment is effectively reaching all aspects of the relevant labor pool. The information is also used to determine if there are proportionate acceptance rates at various stages of the recruitment process. The second information collection is the Personal Identity Verification (PIV) Request, NA Form 6006, used by NARA employees, on-site contractors, volunteers, Foundation members, Interns, and others in order to obtain a Federal Identity Card (FIC). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before February 26, 2007 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents; and (e) whether small businesses are affected by these collections. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

1. *Title:* Applicant Background Survey.

OMB number: 3095–0045.

Agency form number: NA Form 3035.

Type of review: Regular.

Affected public: Individuals and households.

Estimated number of respondents: 5,547.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when applicant wishes to apply for a job at NARA).

Estimated total annual burden hours: 460 hours.

Abstract: NARA is below parity with the relevant Civilian Labor Force representation for many of our mission critical occupations, and has developed a 10 year Strategic Plan to improve representation and be more responsive to the changing demographics of the country. The only way to determine if there are barriers in the recruitment and selection process is to track the groups that apply and the groups at each stage of the selection process. There is no other objective way to make these determinations and no source of this information other than directly from applicants.

The information is not provided to selecting officials and plays no part in the selection of individuals. Instead, it is used in summary form to determine trends over many selections within a given occupation or organizational area. The information is treated in a very confidential manner. No information from this form is entered into the Personnel File of the individual selected, and the records of those not selected are destroyed after the conclusion of the selection process.

The format of the questions on ethnicity and race are compliant with the OMB requirements and are identical to those used in the year 2000 census. This form is a simplification and update of a similar OPM applicant background survey used by NARA for many years.

This form is used to obtain source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of the relevant labor pool and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The

information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

2. *Title:* Personal Identity Verification (PIV) Request.

OMB number: 3095–0057.

Agency form number: NA Form 6006.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Federal Government.

Estimated number of respondents: 1,500.

Estimated time per response: 3 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 75 hours.

Abstract: The collection of information is necessary as to comply with HSPD–12 requirements. Use of the form is authorized by 44 U.S.C 2104. At the NARA College Park facility, individuals receive a proximity card with the Federal Identity Card (FIC) that is electronically coded to permit access to secure zones ranging from a general nominal level to stricter access levels for classified records zones. The proximity card system is part of the security management system that meets the accreditation standards of the Government intelligence agencies for storage of classified information and serves to comply with E.O. 12958.

Dated: December 20, 2006.

Martha Morphy,

Assistant Archivist for Information Services.

[FR Doc. E6–22250 Filed 12–27–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Meeting on Non-Trial Civil Court Case Files

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of public meeting.

SUMMARY: The National Archives and Records Administration (NARA) is holding a public meeting to gather input to help NARA decide how to identify post-1970 non-trial civil cases with sufficient historical value to warrant permanent preservation. Pursuant to the U.S. District Court records schedule issued in 1983, the National Archives preserves all civil cases prior to 1970 and all cases filed after January 1, 1970 that went to trial. Cases filed after January 1, 1970 that did not reach the trial stage are eligible for disposal twenty years after they are transferred to inactive storage. Trial cases are routinely transferred to the legal custody of the National Archives twenty-five years after closure. No non-trial cases in records center storage have been destroyed. NARA must develop a methodology to review a representative portion of the non-trial case files in order to determine which files should be preserved. The meeting is designed to elicit advice from the public, and the legal, judicial, and historical communities on the review methodology.

DATES: The meeting will be held on Thursday, January 25, 2007, from 9 am to 12 noon. Space is limited, and reservations are required. Please RSVP to the individual named in **FOR FURTHER INFORMATION CONTACT** by Friday, January 19, 2007.

ADDRESSES: The meeting will be held in the Mecham Conference Center at the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, NE, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Marvin H. Kabakoff, 781–663–0129, *marvin.kabakoff@nara.gov*.

Dated: December 21, 2006.

Thomas E. Mills,

Assistant Archivist for Regional Records Services.

[FR Doc. E6–22249 Filed 12–27–06; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Revise an Information Collection

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 71 FR 38428 and one comment that had no significant suggestions for altering the data plans was received. Therefore, NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Evaluation of the Research Experiences for Undergraduates (REU) Program in the NSF Directorate for Engineering (ENG).

OMB Number: 3145–0121.

Type of Request: Intent to seek approval to renew an information collection for three years.

Proposed Project: NSF has supported the REU Program since 1987. The Program was evaluated after three and five years and as part of a larger study of all NSF undergraduate research opportunities (URO) in 2003. The proposed project will enable NSF's Directorate for Engineering (ENG) to learn about the activities, outcomes, and impacts of the REU awards made by that Directorate, as well as lessons learned to improve the results of future REU awards. Two types of REU awards will be studied, REU sites and REU

supplements. REU Site awards fund groups of undergraduates to work with faculty members at an institution. Half of the undergraduates in an REU site must come from other institutions. ENG also makes REU Supplement awards to NSF-funded Engineering Research Centers and to other NSF-funded researchers for comparable involvement of undergraduates.

The proposed study will be similar to the 2003 URO study. It will focus on undergraduate ENG REU participants and the faculty members who are responsible for the ENG REU awards during summer 2006 through spring 2007, and will examine in detail for the first time the activities, outcomes, and impacts of REU awards made in a single NSF directorate—ENG. The study will evaluate the longer-term effects of REU experiences with a follow-up survey of the students approximately two years later. The REU program officers in NSF's Division of Engineering Education and Centers (EEC) particularly want to learn in depth about the EEC REU Site and ERC REU Supplement awards from former REU students and awardees, any differences between the Sites and ERC Supplements, and lessons learned for subsequent proposal review and advising prospective PIs. Information will also be used for ENG Program reporting requirements. The study will examine (1) the role of the REU program in aiding participating undergraduates in a decision to pursue graduate education or careers in engineering; and (2) the relationship between how REU activities are structured and managed and participants' subsequent education and career decisions and actions.

The survey data collection will be done on the World Wide Web.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Responses per Form: 5,006.

Estimated Total Annual Burden on Respondents: 2,400 hours (413 respondents at 15 minutes per response and 4,593 respondents at 30 minutes per response).

Frequency of Response: One time for faculty, two times for students.

Dated: December 21, 2006.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E6–22191 Filed 12–27–06; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Commission on 21st Century Education in Science, Technology, Engineering and Mathematics; 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 of the National Science Board Commission on 21st Century Education in Science, Technology, Engineering, and Mathematics:

Date and Time: The meeting will take place at 8 a.m. on January 18, 2007. Please see *http://www.nsf.gov/nsb/edu_com/* for schedule updates.

Place: The meeting will be held in at the Arizona State Capitol, 1700 W. Washington Street, Phoenix, AZ 85007. Check with the information desk in the lobby of the Capitol for the meeting room.

Type of Meeting: Open.

Contact Person: Dr. Elizabeth Strickland, Commission Executive Secretary, National Science Board Office, 4201 Wilson Boulevard, Arlington, VA 22230; Phone: 703–292–4527, E-mail *estrickl@nsf.gov*

Purpose of Meeting: The purpose of this meeting is for the Commission to discuss its draft recommendations relating to K–12 STEM education. A provisional agena for the meeting will be available at *http://www.nsf.gov/nsb/edu_com/ on January 4, 2007.*

Topics to be Discussed: K–Science, Technology, Engineering, and Mathematics Education; recommendations of the Commission.

Public Comment: Written comments to the Commission may be submitted by e-mail to *NSBEdCom@nsf.gov.* Those wishing to make brief public comments during the meeting may register to do so either by signing up at the information table on the day of the meeting or in advance by sending an e-mail to *NSBEdCom@nsf.gov.*

Dated: December 21, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–9900 Filed 12–27–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board Public Service Award Committee; 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: National Science Board Public Service Award Committee (5195).

Date and Time: Tuesday January 16, 2007, 11:00 a.m. EST (teleconference meeting).

Place: The teleconference will originate from the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Ms. Ann Noonan, National Science Board Office, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–7000.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for closing: The nominations being reviewed include information of a personal nature where public disclosure would constitute clearly unwarranted invasions of personal privacy. These matters are exempt from open meeting and public attendance requirements under 5 U.S.C. Appendix 10(d) and 5 U.S.C. 552b(c)(6).

Dated: December 21, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–9898 Filed 12–27–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board Public Service Award Committee; Notice of Meeting

In accordance with the Fedearl Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: National Science Board Public Service Award (5195).

Date and Time: Monday, January 22, 2007, 10:30 a.m. EST (teleconference meeting).

Place: The teleconference will originate from the National Science Board Office, National Science Foundation, 4201 Wilson Blvd., Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Ms. Ann Noonan, National Science Board Office, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–7000.

Purpose of Meeting: To provide advice and recommendations in the selection of the NSB Public Service Award recipients.

Agenda: To review and evaluate grant applications.

Reason for Closing: The nominations being reviewed include information of a personal nature where public disclosure would constitute clearly unwarranted invasions of personal privacy. These matters are exempt 5 U.S.C. 552b(c)(6) of the Government in Sunshine Act.

Dated: December 21, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–9899 Filed 12–27–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[EA–06–230]

In the Matter of Louisiana Energy Services, L.P. (National Enrichment Facility);Order Modifying License For Additional Security Measures (Effective Immediately)

I

Louisiana Energy Services (LES or the Licensee) is the holder of Special Nuclear Material License No. SNM–2010 for the National Enrichment Facility (NEF) issued by the U.S. Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 70. The Licensee is authorized by its license to construct and operate a uranium enrichment facility in accordance with the Atomic Energy Act of 1954, as amended, and 10 CFR Parts 30, 40, and 70. The LES license was issued on June 23, 2006, and is due to expire on June 23, 2036.

II

On September 11, 2001, terrorists simultaneously attacked targets in New York, N.Y., and Washington, D.C., utilizing large commercial aircraft as weapons. In response to the attacks and intelligence information subsequently obtained, the Commission issued a number of Safeguards and Threat Advisories to its licensees in order to strengthen licensees' capabilities and readiness to respond to a potential attack on a nuclear facility. The Commission has also communicated with other Federal, State and local government agencies and industry representatives to discuss and evaluate the current threat environment in order to assess the adequacy of security measures at licensed facilities. In addition, the Commission has been conducting a comprehensive review of its safeguards and security programs and requirements.

As a result of its consideration of current safeguards and security plan requirements, as well as a review of information provided by the intelligence community, the Commission has determined that certain additional measures are required to be implemented by the Licensee as prudent measures to address the current threat environment. Therefore, the Commission is imposing requirements, set forth in the Attachments 1 and 2 [1] of this Order, which supplement existing regulatory requirements, to provide the Commission with reasonable assurance that the public health and safety and common defense and security continue to be adequately protected in the current threat environment. These requirements will remain in effect until the Commission determines otherwise.

The Commission recognizes that some of the requirements set forth in Attachments 1 and 2 [2] to this Order may already have been initiated by the Licensee on its own. It is also recognized that some measures may need to be tailored to specifically accommodate the specific circumstances and characteristics existing at the licensee's facility to achieve the intended objectives and avoid any unforeseen effect on safe operation.

In light of the current threat environment, the Commission concludes that the Additional Security Measures must be embodied in an Order, consistent with the established regulatory framework. In order to provide assurance that the Licensee is implementing prudent measures to achieve an adequate level of protection to address the current threat environment, Materials License SNM–2010 shall be modified to include the requirements identified in Attachments 1 and 2 to this Order. In addition, pursuant to 10 CFR 2.202 and 70.81, I find that, in light of the circumstances described above, the public health, safety, and interest, and the common defense and security require that this Order be immediately effective.

III

Accordingly, pursuant to Sections 53, 62, 63, 81, 147, 149, 161b, 161i, 161o, 182, and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 30, 40, and 70, *it is hereby ordered,* effective immediately, that Material License SNM–2010 is modified as follows:

A. The Licensee shall, notwithstanding the provisions of any Commission regulation to the contrary, comply with the requirements described in Attachments 1 and 2 to this Order. The Licensee shall immediately start implementation of the requirements in Attachments 1 and 2 to the Order and shall complete implementation, unless otherwise specified in Attachments 1 and 2 to this order, no later than 6 months prior to facility operation.

B. 1. The Licensee shall, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in the Attachment, (2) if compliance with any of the requirements is unnecessary in its specific circumstances, or (3) if implementation of any of the requirements would cause the Licensee to be in violation of the provisions of any Commission regulation or its license.

The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

2. If the Licensee considers that implementation of any of the requirements described in Attachment 1 and 2 to this Order would adversely affect safe operation of its facility, the Licensee must notify the Commission, within twenty (20) days of this Order, of the adverse safety impact, the basis for its determination that the requirement has an adverse safety impact, and either a proposal for achieving the same objectives specified in Attachments 1 and 2 in question, or a schedule for modifying the facilities to address the adverse safety condition. If neither approach is appropriate, the Licensee must supplement its response to Condition B1 of this Order to identify the condition as a requirement with which it cannot comply, with attendant justifications as required in Condition B1.

C. 1. The Licensee shall, within twenty (20) days of the date of this Order, submit to the Commission, a schedule for achieving compliance with each requirement described in the Attachment.

2. The Licensee shall report to the Commission when it has achieved full compliance with the requirements described in the Attachment.

D. Notwithstanding any provision of the Commission's regulations to the contrary, all measures implemented or

[1] Attachments 1 and 2 contain safeguards information and will not be released to the public.

[2] To the extent that specific measures identified in the Attachments to this Order require actions pertaining to the Licensee's possession and use of chemicals, such actions are being directed on the basis of the potential impact of such chemicals on radioactive materials and activities subject to NRC regulation.

actions taken in response to this Order shall be maintained until the Commission determines otherwise.

The Licensee's response to Conditions B.1, B.2, C.1, and C.2, above shall be submitted in accordance with 10 CFR 70.5.

In addition, the Licensee's submittals that contain Safeguards Information shall be properly marked and handled in accordance with the Order issued on August 28, 2006, requiring a program for protecting Safeguards Information.

The Director, Office of Nuclear Material Safety and Safeguards, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

IV

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within twenty (20) days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, and the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement, at the same address, to the Regional Administrator, NRC Region II, 61 Forsyth Street, SW, Suite 23T85, Atlanta, GA 30303–8931, and to the Licensee if the answer or hearing request is by a person other than the Licensee. Because of possible disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.*

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee may, in addition to demanding a hearing, at the time the answer is filed or sooner, move to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section III above shall be final twenty (20) days from the date of this Order without further order or proceedings.

If an extension of time for requesting a hearing has been approved, the provisions specified in Section III shall be final when the extension expires if a hearing request has not been received.

An Answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 20th day of December, 2006.

For The Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–22243 Filed 12–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03034625]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 09–25420–01, for Termination of the License and Unrestricted Release of the U.S. Department of the Interior, U.S. Geological Survey—BRD Facility In Gainesville, Florida

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1, 475 Allendale Road, King of Prussia, Pennsylvania; telephone 610–337–5366; fax number 610–337–5393; or by e-mail: *drl1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 09–25420–01. This license is held by U.S. Department of the Interior, U.S. Geological Survey—BRD (the Licensee), for its Florida Integrated Science Center (the Facility), located at 7920 NW 71st Street in Gainesville, Florida. Issuance of the amendment would authorize release of the Facility for unrestricted use and termination of the NRC license. The Licensee requested this action in a letter dated August 11, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would approve the Licensee's August 11, 2006, license amendment request, resulting in release of the Facility for unrestricted use and

the termination of its NRC materials license. License No. 09–25420–01 was issued on January 29, 1998, pursuant to 10 CFR Part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops.

The Facility is situated on a 28 acre parcel of land located within a 600 acre property owned by the University of Florida. The property is used by the University's Fisheries Department and is surrounded by residential areas. Within the Facility, use of licensed materials was confined to Room 15, a 450 square feet room within the 28,000 square feet building, and a 64 square feet storage shed.

By April 2006, the Licensee had ceased licensed activities and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release and for license termination.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility, and seeks the unrestricted use of its Facility and the termination of its NRC materials license. Termination of its license would end the Licensee's obligation to pay annual license fees to the NRC.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey of the Facility on September 22 and October 24, 2006. The final status survey report was submitted to NRC with the Licensee's letters dated October 25 and November 6, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by using the screening approach described in NUREG–1757, ''Consolidated NMSS Decommissioning Guidance,'' Volume 2. The Licensee used the radionuclide-specific derived concentration guideline levels (DCGLs), developed there by the NRC, which comply with the dose criterion in 10 CFR 20.1402. These DCGLs define the maximum amount of residual radioactivity on building surfaces, equipment, and materials, and in soils, that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below these DCGLs and are in compliance with the As Low As Reasonably Achievable (ALARA) requirement of 10 CFR 20.1402. The NRC thus finds that the Licensee's final status survey results are acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities'' (NUREG–1496) Volumes 1–3 (ML042310492, ML042320379, and ML042330385). The staff finds there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has identified no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use and the termination of the NRC materials license is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release and for license termination. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the Florida Bureau of Radiation Control for review on November 20, 2006. On November 20, 2006, the Florida Bureau of Radiation Control responded by e-mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined

that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG–1757, ''Consolidated NMSS Decommissioning Guidance;''
2. Title 10 Code of Federal Regulations, Part 20, Subpart E, ''Radiological Criteria for License Termination;''
3. Title 10, Code of Federal Regulations, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;''
4. NUREG–1496, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities''
5. Department of Interior, Termination Request Letter, dated August 11, 2006 [ML062280486]
6. Department of Interior, Deficiency Response letter, dated September 19, 2006 [ML062640363]
7. Department of Interior, Deficiency Response letter, dated October 25, 2006 [ML063050464]
8. Department of Interior, Deficiency Response letter, dated November 6, 2006 [ML063170366]

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region 1, 475 Allendale Road, King of Prussia this 19th day of December 2006.

For The Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region 1.

[FR Doc. E6–22240 Filed 12–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–36974]

Notice of Availability of Draft Environmental Assessment and Finding of No Significant Impact for Proposed Pa'ina Hawaii, LLC Irradiator in Honolulu, Hawaii

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of opportunity to provide comments.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing a draft Environmental Assessment (EA) for the Pa'ina Hawaii, LLC (Pa'ina or the applicant) license application, dated June 27, 2005. The draft EA is being issued as part of the NRC's decision-making process on whether to issue a license to Pa'ina, pursuant to Title 10 of the U.S. Code of Federal Regulations Part 36, ''Licenses and Radiation Safety Requirements for Irradiators.'' The license would authorize the use of sealed radioactive sources in an underwater irradiator for the production and research irradiation of food, cosmetic, and pharmaceutical products. The proposed irradiator would be located immediately adjacent to Honolulu International Airport on Palekona Street near Lagoon Drive. The irradiator would primarily be used for phytosanitary treatment of fresh fruit and vegetables bound for the mainland from the Hawaiian Islands and similar products being imported to the Hawaiian Islands as well as irradiation of cosmetics and pharmaceutical products. The irradiator would also be used by the applicant to conduct research and development projects, and irradiate a wide range of other materials as specifically approved by the NRC on a case-by-case basis.

The NRC staff will also hold a public meeting to present an overview of the draft EA and to accept oral and written public comments. The meeting date, time and location are listed below:

Meeting Date: Thursday, February 1, 2007.

Meeting Location: Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814, Hotel Telephone number 808–955–4811.

Informal Open House: 6 p.m.—7 p.m.

NRC Overview Presentation: 7 p.m.—7:30 p.m.

Question and Answer: 7:30 p.m.—8 p.m.

Comment Session: 8 p.m.—9 p.m.

Prior to the public meeting, the NRC staff will be available to informally discuss the proposed Pa'ina project and answer questions in an ''open house'' format. This ''open house''' format provides for one-on-one discussions with the NRC staff involved with the preparation of the draft EA. The draft EA meeting officially begins at 7:00 PM and will include: (1) A presentation summarizing the contents of the draft EA and (2) an opportunity for interested government agencies, organizations, and individuals to provide comments on the draft EA. This portion of the meeting will be transcribed by a court reporter. Persons wishing to provide oral comments will be asked to register at the meeting entrance. Individual oral comments may have to be limited by the time available, depending upon the number of persons who register.

Additionally, the NRC will set up a toll-free telephone number that interested members of the public may use to participate. Details of the toll free telephone number will be provided in a public notice prior to the meeting.

Please note that comments do not have to provided at the public meeting and may be submitted at any time throughout the comment period as described in the **DATES** and **ADDRESSES** sections of this notice.

DATES: The public comment period on the draft EA begins with publication of this notice and continues until February 8, 2007. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments submitted by mail should be postmarked by that date to ensure consideration. Comments received or postmarked after that date will be considered to the extent practical. A public meeting to discuss the draft EA will be held as described in the **SUMMARY** section of this notice.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 030–36974 when submitting comments. Comments will also be accepted by e-mail at *NRCREP@nrc.gov* or by facsimile to (301) 415–5397, Attention: Matthew Blevins.

FOR FURTHER INFORMATION CONTACT: Matthew Blevins, Environmental Project Manager, Environmental and Performance Assessment Branch, Division of Waste Management and Environmental Protection, Mail Stop T7-J8, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001. Telephone: (301) 415–7684; e-mail: *mxb6@nrc.gov*

SUPPLEMENTARY INFORMATION:

I. Introduction

On June 27, 2005, the U.S. Nuclear Regulatory Commission (NRC) received a license application from Pa'ina Hawaii, LLC, that, if approved, would authorize the use of sealed radioactive sources in an underwater irradiator for the production and research irradiation of food, cosmetic, and pharmaceutical products. The proposed irradiator would be located immediately adjacent to Honolulu International Airport on Palekona Street near Lagoon Drive. The irradiator would primarily be used for phytosanitary treatment of fresh fruit and vegetables bound for the mainland from the Hawaiian Islands and similar products being imported to the Hawaiian Islands as well as irradiation of cosmetics and pharmaceutical products. The irradiator would also be used by the applicant to conduct research and development projects, and irradiate a wide range of other materials as specifically approved by the NRC on a case-by-case basis.

The NRC has completed its initial evaluation of the proposed irradiator against the requirements found in the NRC's regulations at Title 10 of the Code of Federal Regulations, Part 36, ''Licenses and Radiation Safety Requirements for Irradiators,'' (*i.e.*, 10 CFR Part 36). Typically, the licensing of irradiators is categorically excluded from detailed environmental review as described in the NRC regulations at 10 CFR 51.22(c)(14)(vii). However, the NRC staff entered into a settlement agreement with Concerned Citizens of Honolulu, the interveners in the adjudicatory hearing to be held on the license application. The settlement agreement included a provision for the NRC staff to prepare this draft EA and hold a public comment meeting in Honolulu, Hawaii prior to making a final decision.

The complete draft EA is available on the NRC's Web site: *http://www.nrc.gov/materials.html* and by selecting ''Pa'ina Irradiator'' in the Quick Links box. Copies are also available by contacting Matthew Blevins as noted above.

II. EA Summary

The purpose of the license request (*i.e.*, the proposed action) is to authorize Pa'ina Hawaii to use sealed radioactive sources in a pool irradiator to be located adjacent to the Honolulu International Airport, Honolulu, Hawaii. Pa'ina's license request was previously noticed in the **Federal Register** on August 2, 2005 (70 FR 44396) with a notice of an opportunity to request a hearing.

The staff has prepared the draft EA in support of its review of the license application. The staff considered impacts to such areas as public and occupational health, transportation of the sources, socioeconomics, ecology, water quality, and the effects of aviation accidents and natural phenomena. During routine operations the dose rate at the surface of the irradiator pool is expected to be well below 1 millirem/hour. Considering the location of personnel and operational practices of the irradiator, it is unlikely that an employee could receive more than the occupational dose limit which is 5,000 millirem/year. The expected dose rates outside the building are expected to be indistinguishable from naturally occurring background radiation, therefore it is unlikely that a member of the public could receive more than public dose limit which is 100 millirem/year. For the shipment of the radioactive sources, the maximum dose is also expected to be very small: 0.04 mrem/year. The staff also considered alternative treatments such as fumigation with methyl bromide and heat treatments.

The staff completed consultations under Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act. In addition the staff is providing interested members of the public, the applicant, and State officials with an opportunity to comment on the draft EA.

The complete draft EA is available on the NRC's Web site: *http://www.nrc.gov/materials.html* and by selecting ''Pa'ina Irradiator'' in the Quick Links box. Copies are also available by contacting Matthew Blevins as noted above.

III. Finding of No Significant Impact

The NRC staff has concluded that the proposed action will comply with the licensing requirements found in 10 CFR Part 20, ''Standards for Protection Against Radiation'' and 10 CFR Part 36, ''Licenses and Radiation Safety Requirements for Irradiators.'' Occupational and public exposure to radiation will be significantly less than the limits in 10 CFR Part 20.

The NRC staff has prepared this draft EA in support of the proposed action to issue a license to Pa'ina Hawaii for the possession and use of sealed radioactive sources in an underwater irradiator for the production and research irradiation of food, cosmetic, and pharmaceutical products. On the basis of this EA, NRC has concluded that there are no significant environmental impacts and the license application does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are: Pa'ina License Application; ML052060372; NRC Draft Environmental Assessment, ML063470231. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 21st day of December, 2006.

For the Nuclear Regulatory Commission.

Gregory Suber,

Acting Section Chief, Environmental Review Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E6–22241 Filed 12–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Intent to Prepare an Environmental Impact Statement for the Decommissioning of the Shieldalloy Metallurgical Corporation, New Field, New Jersey

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent (NOI).

SUMMARY: Shieldalloy Metallurgical Corporation (SMC) submitted a decommissioning plan (DP) (ML053190212) on October 21, 2005, that proposes radiological remedial actions that would allow the material license to be amended to a long term control license for the SMC facility located in New Field, New Jersey. By a letter dated January 26, 2006, the U.S. Nuclear Regulatory Commission (NRC) notified SMC that the DP was being

rejected due to technical deficiencies. On June 30, 2006, SMC submitted a supplement (ML061980092) to its DP. In a letter dated October 18, 2006, the NRC accepted the DP for review. The NRC, in accordance with the National Environmental Policy Act (NEPA) and its regulations in 10 CFR Part 51, announces its intent to prepare an Environmental Impact Statement (EIS). The EIS will examine the potential environmental impacts of the proposed decommissioning plan for the SMC facility.

DATES: The public scoping process required by NEPA begins with publication of this NOI and continues until January 31, 2007. Written comments submitted by mail should be postmarked by that date to ensure consideration. Comments mailed after that date will be considered to the extent practical.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rulemaking, Directives, and Editing Branch, Mail Stop: T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket No. 40–7102 when submitting comments. Commentors are also encouraged to send comments electronically to *ShieldalloyEIS@nrc.gov*, or by facsimile to (301) 415–5397, ATTN.: Gregory Suber.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the license review of the SMC decommissioning plan, please contact: Ken Kalman at (301) 415–6664. For general information on the NRC NEPA process, or the environmental review process related to the SMC decommissioning plan, please contact Gregory Suber at (301) 415–1124.

Information and documents associated with the SMC project, including the SMC decommissioning plan and supplement (submitted on October 21, 2005 and June 30, 2006 respectively), are available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html.* Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission Headquarters, 11555 Rockville Pike (first floor), Rockville, Maryland.

SUPPLEMENTARY INFORMATION:

1.0 Background

SMC submitted a decommissioning plan and an environmental report for its Newfield, New Jersey facility to the NRC on October 21, 2005. The NRC will evaluate the potential environmental impacts associated with SMC facility in parallel with the review of the decommissioning plan. This environmental evaluation will be documented in draft and final Environmental Impact Statements in accordance with NEPA and NRC's implementing regulations at 10 CFR Part 51.

2.0 SMC Newfield Facility

The SMC operated a ferrocolumbium manufacturing process at its facility in New Field, NJ. Raw materials included ores which contained licensable quantities of 10 CFR Part 40 source material (natural uranium and thorium.) In 2001, SMC notified the NRC of its intent to decommission the plant because principal activities authorized by the license (SMB–743) had ceased. SMC proposes decommissioning part of the site for unrestricted release and maintaining a portion of the site under a long term control license.

3.0 Alternatives to be Evaluated

No-Action—For the no-action alternative, the NRC would not approve the decommissioning plan. The site would remain subject to the present source material license. This alternative serves as a baseline for comparison.

Proposed action—The proposed action involves approving the decommissioning plan and amending the license to allow long-term storage of source material at SMC's site located in New Field, NJ. Under SMC's proposal, part of the site would be released for unrestricted use while part would be maintained under a long term control license.

Other alternatives not listed here may be identified through the scoping process.

4.0 Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the EIS:

—*Land Use:* Plans, policies and controls;

—*Transportation:* Transportation modes, routes, quantities, and risk estimates;

—*Geology and Soils:* Physical geography, topography, geology and soil characteristics;

Water Resources: Surface and groundwater hydrology, water use and quality, and the potential for degradation;

Ecology: Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;

Air Quality: meteorological conditions, ambient background, pollutant sources, and the potential for degradation;

—*Noise:* ambient, sources, and sensitive receptors;

Historical and Cultural Resources: historical, archaeological, and traditional cultural resources;

Visual and Scenic Resources: landscape characteristics, manmade features and viewshed;

Socioeconomics: demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;

Environmental Justice: potential disproportionately high and adverse impacts to minority and low-income populations;

Public and Occupational Health: potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios (including natural events);

Waste Management: types of wastes expected to be generated, handled, and stored; and

Cumulative Effects: impacts from past, present and reasonably foreseeable actions at, and near the site(s).

This list is not intended to be all inclusive, nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to, or deletions from this list may occur as a result of the public scoping process.

5.0 Scoping Meeting

One purpose of this NOI is to encourage public involvement in the EIS process, and to solicit public comments on the proposed scope and content of the EIS. The NRC held a public scoping meeting in Newfield, New Jersey, to solicit both oral and written comments from interested parties. Approximately 150 people attended the meeting.

Scoping is an early and open process designed to determine the range of actions, alternatives, and potential impacts to be considered in the EIS, and to identify the significant issues related to the proposed action. It is intended to solicit input from the public and other agencies so that the analysis can be more clearly focused on issues of genuine concern. The principal goals of the scoping process are to:

—Ensure that concerns are identified early and are properly studied;

—Identify alternatives that will be examined;

—Identify significant issues that need to be analyzed;

—Eliminate unimportant issues; and

—Identify public concerns.

The scoping meeting began with NRC staff providing a description of the NRC's role and mission. NRC staff gave a brief overview of the licensing process followed by a brief description of the environmental review process. The bulk of the meeting was reserved for attendees to make oral comments.

6.0 Scoping Comments

Written comments should be mailed to the address listed above in the **ADDRESSES** Section.

The NRC staff will make the scoping summary and project-related materials available for public review through our electronic reading room: *http://www.nrc.gov/reading-rm/adams.html*. The scoping meeting summaries and project-related materials will also be available on the NRC's SMC Web page: *http://www.nrc.gov/materials/fuel-cycle-fac/smcfacility.html* (case sensitive).

7.0 The NEPA Process

The EIS for the SMC facility will be prepared according to the National Environmental Policy Act of 1969 and the NRC's NEPA Regulations at 10 CFR Part 51.

After the scoping process is complete, the NRC and its contractor will prepare a draft EIS. A 45-day comment period on the draft EIS is planned, and public meetings to receive comments will be held approximately three weeks after distribution of the draft EIS. Availability of the draft EIS, the dates of the public comment period, and information about the public meetings will be announced in the **Federal Register**, on NRC's SMC Web page, and in the local news media when the draft EIS is distributed. The final EIS will incorporate public comments received on the draft EIS.

Signed in Rockville, MD. this 20th day of December 2006.

For The Nuclear Regulatory Commission.

Gregory F. Suber,

Acting Branch Chief, Environmental and Performance Assessment Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E6–22239 Filed 12–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS) Subcommittee Meeting On Power Uprates; Revised

A portion of the ACRS Subcommittee meeting on Power Uprates (Browns Ferry Unit 1) scheduled to be held on Tuesday and Wednesday, January 16–17, 2007 at 11545 Rockville Pike, Room T–2B3, Rockville, Maryland will be closed to discuss information that is proprietary to General Electric, the Tennessee Valley Authority, and their contractors pursuant to 5 U.S.C. 552b (c)(4). All other items pertaining to the meeting remain the same as published previously in the **Federal Register** on Thursday, December 21, 2006, 71 FR 76707.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official, Mr. Ralph Caruso (Telephone: 301–415–8065) between 7:15 a.m. and 5 p.m. (ET).

Dated: December 21, 2006.

Michael R. Snodderly,

Branch Chief, ACRS/ACNW.

[FR Doc. E6–22244 Filed 12–27–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Decommissioning Guidance; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of two volumes of NUREG–1757, ''Consolidated Decommissioning Guidance.'' The first volume is ''Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees'' (NUREG–1757, Vol. 1, Rev. 2), which provides guidance for planning and implementing the termination of materials licenses. The second volume, ''Consolidated Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria'' (NUREG–1757, Vol. 2, Rev. 1), provides guidance for compliance with the radiological criteria for termination of licenses. The guidance is intended for use by NRC staff and licensees. It is also available to Agreement States and the public.

ADDRESSES: NUREG–1757 is available for inspection and copying for a fee at the Commission's Public Document Room, NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. NUREG–1757 is also available electronically on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1757/*, and from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html*.

FOR FURTHER INFORMATION, CONTACT: Duane W. Schmidt, Mail Stop T–7E18, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6919; e-mail: *dws2@nrc.gov*.

SUPPLEMENTARY INFORMATION: In September 2003, NRC staff consolidated and updated the policies and guidance of its decommissioning program in a three-volume NUREG series, NUREG–1757, ''Consolidated Decommissioning Guidance.'' This NUREG series provides guidance on: planning and implementing license termination under NRC's License Termination Rule (LTR), in the Code of Federal Regulations, Title 10, Part 20, Subpart E; complying with the radiological criteria of the LTR for license termination; and complying with the requirements for financial assurance and recordkeeping for decommissioning and timeliness in decommissioning of materials facilities. The staff periodically updates NUREG–1757, so that it reflects current NRC decommissioning policy.

In September 2005, the staff issued, for public comment, Draft Supplement 1 to NUREG–1757, which contained proposed updates to the three volumes of NUREG–1757 (70 FR 56940; September 29, 2005). Draft Supplement 1 included new and revised decommissioning guidance that addresses some issues with implementation of the LTR. These issues include restricted use and institutional controls, onsite disposal of radioactive materials, selection and justification of exposure scenarios based on reasonably foreseeable future land use, intentional mixing of contaminated soil, and removal of material after license termination. The staff also developed new and revised guidance on other issues, including engineered barriers.

The staff received stakeholder comments on Draft Supplement 1 and prepared responses to these comments. The stakeholder comments and the NRC staff responses are located on NRC's decommissioning Web site, at *http://*

www.nrc.gov/what-we-do/regulatory/decommissioning/reg-guides-comm.html. Supplement 1 has not been finalized as a separate document; instead, updated sections from Supplement 1 have been placed into the appropriate locations in revisions of Volumes 1 and 2 of NUREG–1757.

Volume 1 of NUREG–1757, entitled ''Consolidated Decommissioning Guidance: Decommissioning Process for Materials Licensees,'' takes a risk-informed, performance-based approach to the information needed and the process to be followed to support an application for license termination for a materials licensee. Volume 1 is intended to be applicable only to the decommissioning of materials facilities licensed under 10 CFR Parts 30, 40, 70, and 72 and to the ancillary surface facilities that support radioactive waste disposal activities licensed under 10 CFR Parts 60, 61, and 63. However, parts of Volume 1 are applicable to reactor licensees, as described in the Foreword to the volume.

Volume 2 of the NUREG series, entitled, ''Consolidated Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria,'' provides technical guidance on compliance with the radiological criteria for license termination of the LTR. Volume 2 is applicable to all licensees subject to the LTR.

The staff plans to revise Volume 3 of this NUREG series at a later date, and that revision will incorporate the Supplement 1 guidance that is related to Volume 3.

NUREG–1757 is intended for use by NRC staff and licensees. It is also available to Agreement States and the public. This NUREG is not a substitute for NRC regulations, and compliance with it is not required. The NUREG describes approaches that are acceptable to NRC staff. However, methods and solutions different than those in this NUREG will be acceptable, if they provide a basis for concluding that the decommissioning actions are in compliance with NRC regulations.

Congressional Review Act (CRA)

In accordance with the Congressional Review Act (CRA) of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, MD, this 19th day of December, 2006.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning & Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E6–22248 Filed 12–27–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Collection: Scholarship for Service Program Internet Webpage

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) submitted a request to the Office of Management and Budget (OMB). OPM requested OMB to approve a collection associated with the Scholarship For Service (SFS) Program Internet webpage. Approval of the webpage is necessary to facilitate the timely registration, selection, and placement of program-enrolled students in Federal agencies.

The SFS Program was established by the National Science Foundation in accordance with the Federal Cyber Service Training and Education Initiative as described in the President's *National Plan for Information Systems Protection.* This program seeks to increase the number of qualified students entering the fields of information assurance and computer security in an effort to respond to the threat to the Federal Government's information technology infrastructure. The program provides capacity building grants to selected 4-year colleges and universities to develop or improve their capacity to train information assurance professionals. It also provides selected 4-year colleges and universities scholarship grants to attract students to the information assurance field. Participating students who receive scholarships from this program are required to serve a 10-week internship during their studies and complete a post-graduation employment commitment equivalent to the length of the scholarship or one year, whichever is longer.

OPM projects that 450 students will graduate from participating institutions over the next three years. These students will need placement in addition to the 180 students needing placement this year. We estimate the collection of information for registering and creating an online resume to be 45 minutes to 1 hour. We estimate the total number of hours to be 630.

Comments: We received no comments in response to our 60-day notice.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff/Director of Internal Affairs.

[FR Doc. E6–22299 Filed 12–27–06; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27608; 812–13208]

Barclays Global Fund Advisors, et al.; Notice of Application

December 21, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application to amend certain prior orders under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1)and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order that permits: (a) An open-end management investment company, whose series are based on certain fixed income securities indices, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices; and (c) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares (the ''Prior Fixed Income Order'').[1] Applicants seek to amend the Prior Fixed Income Order in order to offer an additional series based on a specified high-yield bond index (the ''New Fund''). In addition, the order would delete a condition related to future relief

[1] Barclays Global Fund Advisors, *et al.*, Investment Company Act Release No. 25622 (June 25, 2002), as subsequently amended by iShares Trust, *et al.*, Investment Company Act Release No. 26006 (Apr. 15, 2003), Barclays Global Fund Advisors, *et al.*, Investment Company Act Release No. 26175 (Sept. 8, 2003), and Barclays Global Fund Advisors, *et al.*, Investment Company Act Release No. 27417 (June 23, 2006).

in the Prior Fixed Income Order and in certain prior orders relating to other exchange-traded funds offered by iShares Trust (the ''Trust'') and iShares, Inc. (the ''Corporation,'' together with the Trust, the ''Companies'') (the ''Prior Equity Orders'', together with the Prior Fixed Income Order, the ''Prior Orders'').[2]

APPLICANTS: Barclays Global Fund Advisors (the ''Adviser''), the Corporation, the Trust, and SEI Investments Distribution Co. (the ''Distributor'').

FILING DATES: The application was filed on June 30, 2005 and amended on April 20, 2006 and November 22, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 16, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Ira Shapiro, Barclays Global Fund Advisors, c/o Barclays Global Investors, N.A., 45 Fremont Street, San Francisco, CA 94105; Peter Kronberg, iShares, Inc. and iShares Trust, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; John Munch, SEI Investments Distribution Co., One Freedom Valley Drive, Oaks, PA 19456; and W. John McGuire, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Michael W. Mundt, Senior Special Counsel, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE, Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. The Corporation is an open-end management investment company registered under the Act and organized as a Maryland corporation. The Trust and Corporation are organized as series funds with multiple series. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser to the New Fund. The Distributor, a broker-dealer unaffiliated with the Adviser and registered under the Securities Exchange Act of 1934 (''Exchange Act''), will serve as the principal underwriter of the New Fund's shares.

2. The Trust is currently permitted to offer several series based on fixed income securities indices in reliance on the Prior Fixed Income Order. Applicants seek to amend the Prior Fixed Income Order to permit the Trust to offer the New Fund that, except as described in the application, would operate in a manner identical to the existing series of the Trust that are subject to the Prior Fixed Income Order.[3]

3. The New Fund will invest in a portfolio of securities generally consisting of the component securities of the iBoxx $ Liquid High Yield Index (formerly the GS $ HYTop ™ Index and the GS $ InvesTop High-Yield Bond Index) (the ''Underlying Index''). The Underlying Index is a rules-based index designed to reflect the 50 most liquid and tradable U.S. dollar-denominated high-yield corporate bonds registered for sale in the U.S. or exempt from registration. No entity that creates, compiles, sponsors, or maintains the Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, the Distributor, or a promoter of the New Fund.

4. The investment objective of the New Fund will be to provide investment results that correspond generally to the price and yield performance of the Underlying Index. The New Fund will utilize as an investment approach a representative sampling strategy where the New Fund will seek to hold a representative sample of the component securities of the Underlying Index. The New Fund generally will invest at least 90% of its assets in the component securities of the Underlying Index, but at times may invest up to 20% of its assets in certain futures, options, and swap contracts, cash and cash equivalents, and in bonds not included in its Underlying Index which the Adviser believes will help the New Fund track the Underlying Index. Applicants state that such high-yield corporate bonds will have pricing and liquidity characteristics similar to the component securities of the Underlying Index. Applicants expect that the New Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than 5 percent.

5. Applicants state that the New Fund will comply with the federal securities laws in accepting a deposit of a portfolio of securities designed by the Adviser to correspond generally to the price and yield of the New Fund's Underlying Index (''Deposit Securities'') and satisfying redemptions with portfolio securities of the New Fund (''Fund Securities''), including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 (the ''Securities Act'').[4]

6. Applicants state that all discussions contained in the application for the Prior Fixed Income Order are equally applicable to the New Fund, except as specifically noted by applicants (and summarized in this notice). Applicants believe that the requested relief

[2] Barclays Global Fund Advisors, *et al.*, Investment Company Act Rel. No. 24452 (May 12, 2000), iShares Trust, *et al.*, Investment Company Act Rel. No. 25111 (Aug. 15, 2001) and iShares, Inc., *et al.*, Investment Company Act Rel. No. 25215 (Oct. 18, 2001), each as amended by iShares, Inc., *et al.*, Investment Company Act Rel. No. 25623 (June 25, 2002), iShares Trust, *et al.*, Investment Company Act Rel. No. 26006 (April 15, 2003) and Barclays Global Fund Advisors, Investment Company Act Rel. No. 26626 (Oct. 5, 2004). Barclays Global Fund Advisors, *et al.*, Investment Company Act Rel. No. 24451 (May 12, 2000), as amended by iShares, Inc., *et al.*, Investment Company Act Rel. No. 25623 (June 25, 2002) and iShares Trust, *et al.*, Investment Company Act Rel. No. 26006 (April 15, 2003).

[3] If the amended order is granted, the New Fund would also be able to rely on an exemptive order granting certain relief from section 24(d) of the Act to the existing series of the Trust that are subject to the Prior Orders. See iShares, Inc., *et al.*, Investment Company Act Release No. 25595 25623 (June 25, 2002) as amended by iShares Trust, et al, Investment Company Act Release No. 26006 (Apr. 15, 2003) (''Prospectus Delivery Order'').

[4] In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the New Fund will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Fund Securities. The prospectus for the New Fund will also state that an authorized participant that is not a ''Qualified Institutional Buyer'' as defined in rule 144A(a)(1) will not be able to receive Fund Securities for redemption that are restricted securities eligible for resale under rule 144A.

continues to meet the necessary exemptive standards.

Future Relief

7. Applicants also seek to amend the Prior Orders to modify the terms under which the Companies may offer additional series in the future based on other securities indices (''Future Funds''). The Prior Fixed Income Order is currently subject to a condition that does not permit applicants to register any Future Fund by means of filing a post-effective amendment to a Fund's registration statement or by any other means, unless applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission. The Prior Equity Orders are currently subject to a similar condition related to future relief, although the condition to the Prior Equity Orders permits Future Funds to register with the Commission by means of filing a post-effective amendment to the Trust's or Corporation's registration statement if the Future Fund could be listed on a national securities exchange (''Exchange'') without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

8. The order would amend the Prior Orders to delete these conditions. Any Future Funds will (a) be advised by the Adviser or an entity controlled by or under common control with the Adviser; (b) track Underlying Indices that are created, compiled, sponsored or maintained by an entity that is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Adviser, the Distributor, the Trust or any subadviser or promoter of a Future Fund, and (c) comply with the respective terms and conditions of the Prior Orders, as amended by the present application.

9. Applicants believe that the modification of the future relief available under the Prior Orders would be consistent with sections 6(c) and 17(b) of the Act and that granting the requested relief will facilitate the timely creation of Future Funds and the commencement of secondary market trading of such Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Orders have been appropriate for the exchange-traded funds advised by the Adviser (''Funds'') and would remain appropriate for Future Funds. Applicants also submit that tying exemptive relief under the Act to the ability of a Future Fund to be listed on an Exchange without the need for a rule 19b–4 filing under the Exchange Act is not necessary to meet the standards under sections 6(c) and 17(b) of the Act.

Applicants' Conditions

Applicants agree that the Prior Orders will be subject to the following conditions:

1. Each Fund's prospectus (''Prospectus'') and product description (''Product Description'') will clearly disclose that, for purposes of the Act, the shares of each Fund (''iShares'') are issued by the Fund, which is an investment company, and that the acquisition of iShares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the investment company enter into an agreement with the Fund regarding the terms of the investment.

2. As long as a Fund operates in reliance on the requested order, the iShares will be listed on an Exchange.

3. Neither the Trust, the Corporation, nor any Fund will be advertised or marketed as an open-end fund or a mutual fund. Each Fund's Prospectus will prominently disclose that iShares are not individually redeemable shares and will disclose that the owners of iShares may acquire those iShares from the Fund and tender those iShares for redemption to the Fund in Creation Unit Aggregations [5] only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that iShares are not individually redeemable and that owners of iShares may acquire those iShares from the Fund and tender those iShares for redemption to the Fund in Creation Unit Aggregations only.

4. The Web site(s) for the Trust and the Corporation, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each Fund: (a) The prior business day's net asset value (''NAV'') and the midpoint of the bid-ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Trust or the Corporation, as applicable, has information about the premiums and discounts at which that Fund's iShares have traded.

5. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition 4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per iShare basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

6. Before a Fund may rely on the Prospectus Delivery Order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in iShares of such Fund to deliver a Product Description to purchasers of iShares.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22262 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

[5] A ''Creation Unit Aggregation'' is a group of 50,000 or more iShares.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27605; 812–13265]

Forum Funds, et al.; Notice of Application

December 20, 2006.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant

relief from certain disclosure requirements.

Applicants: Forum Funds (''Trust'') and Absolute Investment Advisers LLC (''Advisor'').

Filing Dates: The application was filed on March 8, 2006, and amended on August 23, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 16, 2007 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. *Applicants:* Anthony C.J. Nuland, Esq., Seward & Kissel LLP, 1200 G Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 551–6868, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0104 (telephone (202) 551–8090).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is comprised of multiple series, each with separate investment objective, policies, and restrictions.[1] The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the one existing Fund pursuant to an investment advisory agreement (''Advisory Agreement''). The Advisory Agreement has been approved by the Trust's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Advisor (''Independent Trustees''), as well as by the shareholders of the Fund.

2. The Advisor, in its capacity as investment adviser to the Fund, oversees the portfolio management of the Fund by its subadvisers (each, a ''Sub-Advisor''). The Advisor will provide overall investment management services to each Fund, including Sub-advisor monitoring and evaluation and would be responsible for recommending the hiring, termination and replacement of Sub-Advisors to the Board. All subadvisory agreements (''Sub-Advisory Agreements'') will be approved by the Board, including a majority of the Independent Trustees. Under each Sub-Advisory Agreement, the Sub-Advisor would determine which securities will be purchased and sold for a Fund' investment portfolio or for a portion of the portfolio. Each Sub-Advisor will be registered under the Advisers Act and paid by the Advisor out of the fee it receives from the Fund under its Advisory Agreement. Applicants request an order to permit the Advisor, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Advisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or of the Advisor, other than by reason of serving as a Sub-Advisor to one or more of the Funds (''Affiliated Sub-Advisor'').

3. Applicants also request an exemption from the various disclosure provisions described below that may require a Fund to disclose fees paid by the Advisor to each Sub-Advisor. An exemption is requested to permit each Fund to disclose (both as a dollar amount and as a percentage of the Fund's net assets): (a) The aggregate fees paid to the Advisor and Affiliated Sub-Advisors; and (b) the aggregate fees paid to Sub-Advisors other than Affiliated Sub-Advisors (''Aggregate Fee Disclosure''). For any Fund that employs an Affiliated Sub-Advisor, the Fund will provide separate disclosure of any fees paid to such Affiliated Sub-Advisor.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the

[1] Applicants request relief with respect to existing and future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Advisor or an entity controlling, controlled by, or under common control with the Advisor; (b) uses the multi-manager structure, as described in the application; and (c) complies with the terms and conditions of the application (''Funds''). The Trust is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-Advisor (as defined below), the name of the Advisor will precede the name of the Sub-Advisor.

Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

7. Applicants assert that by investing in a Fund, shareholders are in effect hiring the Advisor to manage the Fund' assets through monitoring and evaluation of Sub-Advisors rather than by hiring the Advisor's own employees to directly manage assets, and that shareholders will expect that the Advisor, under the overall authority of the Board, will oversee the Sub-Advisors and recommend to the Board whether to hire, terminate or replace Sub-Advisors. Applicants believe that permitting Sub-Advisors to be hired without incurring the delay and expense of obtaining shareholder approval of each Sub-Advisory Agreement is appropriate in the interest of the Fund's shareholders and will allow each Fund to potentially operate more efficiently. Applicants note that the Advisory Agreements will continue to be subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants further assert that many Sub-Advisors use a ''posted'' rate schedule to set their fees. Applicants state that while investment advisers are willing to negotiate fees that are lower than those posted on the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Sub-Advisors to negotiate lower subadvisory fees with the Advisor, the benefits of which may be passed on to Fund shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Advisor will provide general investment management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will: (i) Set the Fund's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisors to manage all or a portion of a Fund's assets; (iii) allocate and, when appropriate, reallocate a Fund's assets among multiple Sub-Advisors; (iv) monitor and evaluate Sub-Advisor performance; and (v) implement procedures reasonably designed to ensure that Sub-Advisors comply with the relevant Fund's investment objective, policies and restrictions.

2. Before a Fund may rely on the order requested herein, the operation of the Fund in the manner described in this application will be approved by a majority of the Fund's outstanding voting securities as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 3 below, by the initial shareholder before such Fund's shares are offered to the public.

3. The prospectus for each Fund will disclose the existence, substance and effect of any order granted pursuant to this application. In addition, each Fund will hold itself out to the public as employing the manager of managers structure described in this application. The prospectus will prominently disclose that the Advisor has ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisors and recommend their hiring, termination, and replacement.

4. Within 90 days of the hiring of any new Sub-Advisor, shareholders of the relevant Fund will be furnished all information about the new Sub-Advisor that would be included in a proxy statement, except as modified to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Sub-Advisor. To meet this obligation, the Advisor will provide shareholders of the applicable Fund, within 90 days of the hiring of a new Sub-Advisor, with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

5. No trustee/director or officer of a Fund or director or officer of the Advisor will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Advisor, except for: (i) Ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by or is under common control with a Sub-Advisor.

6. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

7. Whenever a Sub-Advisor change is proposed for a Fund with an Affiliated Sub-Advisor, the Fund's Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor derives an inappropriate advantage.

8. Each Fund in its registration statement will disclose the Aggregate Fee Disclosure.

9. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

10. The Advisor will provide the Board, no less frequently than quarterly, with information about the Advisor's profitability on a per Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Sub-Advisor during the applicable quarter.

11. Whenever a Sub-Advisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the Advisor's profitability.

12. The Advisor will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Advisor, without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

13. The requested order will expire on the effective date of rule 15a-5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–22200 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54988; File No. S7–24–89]

Joint Industry Plan; Solicitation of Comments and Order Granting Temporary Summary Effectiveness to Request to Extend the Operation of the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis, Submitted by the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the National Stock Exchange, Inc., the Nasdaq Stock Market LLC, NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc., and to Request Permanent Approval of the Plan

December 20, 2006.

I. Introduction and Description

On December 12, 2006, NYSE Arca, Inc. (''NYSEArca''), on behalf of itself and the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Chicago Stock Exchange, Inc. (''CHX''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the International Securities Exchange, Inc. (''ISE''), the National Association of Securities Dealers, Inc. (''NASD''), the National Stock Exchange, Inc. (''NSX''), the Nasdaq Stock Market LLC (''Nasdaq''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (hereinafter referred to collectively as ''Participants''),[1] as members of the operating committee (''Operating Committee'' or ''Committee'') of the Plan submitted to the Securities and Exchange Commission (''Commission'') a request to extend the operation of the Plan, along with a request for permanent approval of the Plan.[2]

The Nasdaq UTP Plan governs the collection, processing, and dissemination on a consolidated basis of quotation and last sale information for Nasdaq-listed securities for each of its Participants. This consolidated information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Nasdaq securities.[3]

This order grants summary effectiveness, pursuant to Rule 608(b)(4) under the Securities Exchange Act of 1934 (''Act''),[4] to the request to extend operation of the Plan, as modified by all changes previously approved (''Date Extension''). Pursuant to Rule 608(b)(4) under the Act,[5] the Date Extension will be effective upon publication in the **Federal Register** on temporary basis for 120 days from the date of publication.[6]

II. Discussion

The Commission finds that extending the operation of the Plan is consistent with the requirements of the Act and the rules and regulations thereunder, and, in particular, Section 12(f)[7] and Section 11A(a)(1)[8] of the Act and Rules 601 and 608 thereunder.[9] Section 11A of the Act directs the Commission to facilitate the development of a national market system for securities, ''having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets,'' and cites as an objective of that system the ''fair competition . . . between exchange markets and markets other than exchange markets.''[10] When the Commission first approved the Plan on a pilot basis, it found that the Plan ''should enhance market efficiency and fair competition, avoid investor confusion, and facilitate surveillance of concurrent exchange and OTC trading.''[11] The Plan has been in existence since 1990 and Participants have been trading Nasdaq securities under the Plan since 1993.

The Commission finds that extending the operation of the Plan through summary effectiveness furthers the goals described above by preventing the lapse of the sole effective transaction reporting plan for Nasdaq securities traded by exchanges pursuant to unlisted trading privileges. The Commission believes that the Plan is currently a critical component of the national market system and that the Plan's expiration would have a serious, detrimental impact on the further development of the national market system.

III. Solicitation of Comments

The Commission seeks general comments on the extension of the operation of the Plan, as well as the request for permanent approval of the Plan. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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 S7–24–89 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 S7–24–89. 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 written statements with respect to the Plan extension and the request for permanent approval of the Plan that are filed with the Commission, and all written communications relating to the Plan extension and the request for permanent approval of the Plan 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 the filing also will be

[1] NYSEArca is the chair of the operating committee (''Operating Committee'' or ''Committee'') for the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq UTP Plan'' or ''Plan'') by the Participants.

[2] *See* letter from Bridget M. Farrell, Chairman, OTC/UTP Operating Committee, to Nancy M. Morris, Secretary, Commission, dated December 12, 2006.

[3] *See* Securities Exchange Act Release No. 52886 (December 5, 2005), 70 FR 74059 (December 14, 2005).

[4] 17 CFR 242.608(b)(4).

[5] 17 CFR 242.608(b)(4).

[6] The Participants requested that the Commission extend the previously issued exemption from compliance with Section VI.C.1 of the Plan. However, this exemption is no longer necessary as Nasdaq is now a registered national securities exchange with respect to Nasdaq-listed securities.

[7] 15 U.S.C. 78*l*(f). Nasdaq became an exchange on January 13, 2006. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006). Therefore, unlisted trading privileges for Nasdaq securities are governed by Section 12(f)(1)(A)(i).

[8] 15 U.S.C. 78k–1(a)(1).

[9] 17 CFR 242.601 and 17 CFR 242.608.

[10] 15 U.S.C. 78k–1(a).

[11] *See* Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990).

available for inspection and copying at the Office of the Secretary of the Committee, currently located at the NYSEArca, 100 South Wacker Drive, Suite 1800, Chicago, IL 60606. 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 S7–24–89 and should be submitted on or before January 18, 2007.

IV. Conclusion

It is therefore ordered, pursuant to Sections 12(f) and 11A of the Act [12] and paragraph (b)(4) of Rule 608 thereunder,[13] that the operation of the Plan, as modified by all changes previously approved, be, and hereby is, extended, for a period of 120 days from the date of publication of this Date Extension in the **Federal Register**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22198 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54971; File No. SR–ISE–2006–65]

Self-Regulatory Organizations; International Securities Exchange, LLC ; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

December 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 21, 2006, the International Securities Exchange, LLC (''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the Exchange. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on 3 Premium Products.[5] The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the following 3 Premium Products: streetTRACKS KBW Bank ETF (''KBE''), streetTRACKS KBW Capital Markets ETF (''KCE''), and streetTRACKS KBW Insurance ETF (''KIE'').[6] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on KBE, KCE and KIE.[7] The amount of the execution fee and comparison fee for products covered by this filing would be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders [8] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions would be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[9] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions would be $0.16 and $0.03 per contract, respectively. All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement of Section 6(b)(4) of the Act [10] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change will impose any inappropriate burden on competition.

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.

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[12] 15 U.S.C. 78l(f) and 15 U.S.C. 78k–1.

[13] 17 CFR 242.608(b)(4).

[14] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Premium Products is defined in the Schedule of Fees as the products enumerated therein.

[6] The ''KBW Bank Index^{sm}'', the ''KBW Capital Markets Indexsm,'' the ''KBW Insurance Indexsm,'' ''KBW'' and ''Keefe, Bruyette & Woodssm'' are service marks of Keefe, Bruyette & Woods, Inc.sm, and have been licensed for use by State Street bank and Trust in connection with the listing and trading of KBE, KCE, and KIE on the American Stock Exchange. KBE, KCE and KIE are not sponsored, sold or endorsed by Keefe, Bruyette &Woods, Inc. and Keefe, Bruyette &Woods, Inc. makes no representation regarding the advisability of investing in KBE, KCE and KIE. Keefe, Bruyette &Woods, Inc. has not licensed or authorized ISE to (i) engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on KBE, KCE and KIE or (ii) to use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on KBE, KCE and KIE or with making disclosures concerning options on KBE, KCE and KIE under any applicable federal or state laws, rules or regulations. Keefe, Bruyette & Woods, Inc. does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE. KBE, KCE, and KIE constitute ''Fund Shares,'' as defined by ISE Rule 502(h).

[7] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900).

[8] Public Customer Order is defined in Exchange Rule 100(a)(33) as an order for the account of a Public Customer. Public Customer is defined in Exchange Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[9] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2006–65 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–ISE–2006–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2006–65 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22193 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54952; File No. SR–NASD–2006–039]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Amend NASD Rules To Modify and Expand NASD's Authority To Initiate Trading and Quotation Halts in OTC Equity Securities

December 18, 2006.

I. Introduction

On March 22, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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: (1) Amend NASD rules to modify and expand NASD's authority to direct its members to halt trading and quotation in certain over-the-counter (''OTC'') equity securities (''OTC Equity Securities''); [3] and (2) adopt factors that NASD may consider in determining, in its discretion, whether to impose a trading and quotation halt in OTC Equity Securities. On May 23, 2006, NASD filed with the Commission Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 7, 2006.[5] The Commission received one comment letter in response to the proposal.[6] On November 8, 2006, NASD filed Amendment No. 2 to the proposed rule change.[7] The text of Amendment No. 2 to the proposed rule change is available on NASD's Web site at *http://www.nasd.com*, at NASD's Office of the Secretary, and at the Commission's Public Reference Room. This order approves the proposed rule change, as amended.

II. Description of the Proposal

NASD proposes to expand the scope of its authority with respect to trading and quotation halts in OTC Equity Securities. Currently, NASD Rule 6545 provides NASD with limited trading and quotation halt authority solely for securities quoted on the OTC Bulletin Board (''OTCBB''). Specifically, under NASD Rule 6545, NASD can direct NASD members to halt trading and quotations in OTCBB securities only where: (1) The OTCBB security (or security underlying an OTCBB American Depository Receipt (''ADR'')) is listed on or registered with a foreign securities exchange or market and the foreign securities exchange or market or regulatory authority halts trading in the security; (2) the OTCBB security (or the security underlying the OTCBB ADR) is a derivative or component of a security listed on or registered with The NASDAQ Stock Market LLC or a national securities exchange or foreign securities exchange or market and that exchange or market halts trading in the underlying security; or (3) the issuer of the OTCBB security (or security underlying the OTCBB ADR) fails to comply with the requirements of Rule 10b–17 under the Act.[8] NASD Rule 6545 provides NASD with authority to halt trading and quotations of OTCBB securities in the foregoing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NASD Rule 6610(d).

[4] Amendment No. 1 replaced and superseded the original rule filing in its entirety.

[5] *See* Securities Exchange Act Release No. 53920 (June 1, 2006), 71 FR 33026 (''Notice'').

[6] *See* Letter from R. Cromwell Coulson, Chief Executive Office, Pink Sheets LLC (''Pink Sheets''), to Nancy M. Morris, Secretary, Commission, dated July 10, 2006.

[7] In Amendment No. 2, which supplemented the proposed rule change as filed, NASD made typographical, non-substantive changes to the rule text contained in the proposed rule change. Two of the technical changes that are the subject of Amendment No. 2 were incorporated into the rule text that was published in the Notice. *See* Notice, *supra* note 5, at note 5 and accompanying text (citing to a conversation between Kosha Dalal, Associate General Counsel, NASD, and Tim Fox, Special Counsel, Division of Market Regulation, Commission, on June 1, 2006). In addition, in Amendment No. 2, NASD responded to the comments raised in the Pink Sheets Letter. In light of the purely technical nature of Amendment No. 2, the Commission is not publishing Amendment No. 2 for public comment.

[8] 17 CFR 240.10b–17. Rule 10b–17 generally requires the issuer of a class of publicly-traded securities to provide NASD with notice no later than 10 days prior to the record date of a dividend or distribution.

circumstances for up to five business days.

NASD proposes to expand the scope of its authority to direct NASD members to halt trading and quotations to cover all OTC Equity Securities,[9] which includes ADRs that trade in the OTC market as well as securities quoted in quotation mediums other than the OTCBB (*e.g.*, the Pink Sheets).[10] Further, NASD proposes to modify and expand the scope of its trading and quotation halt authority beyond halts related to non-compliance with Rule 10b–17 under the Act,[11] while limiting such authority only to those extraordinary events that have a material effect on the market for the OTC Equity Security or that have the potential to cause major disruption to the marketplace and/or cause significant uncertainty in the settlement and clearance process. In addition, NASD proposes to increase from five business days to ten business days the maximum length a trading and quotation halt can be imposed under NASD Rule 6660. Finally, NASD proposes to adopt IM–6660–1 that sets forth certain factors that it will consider in determining, in its discretion, whether to direct NASD members to halt quoting and trading in an OTC Equity Security.[12] According to NASD, NASD staff would weigh the relevant information and make a determination whether halting trading in the security is appropriate and may consult with NASD's Uniform Practice Code (''UPC'') Committee (or any successor thereto) as it deems necessary or appropriate.[13] In its proposal to expand its existing trading and quotation halt authority to all OTC Equity Securities, NASD stated its belief that its trading and quotation halt authority should apply uniformly to all OTC Equity Securities, and affirmed its belief that eliminating this disparity will further investor protections in this area of the securities market and enhance the quality of the OTC market.

NASD noted that, under the proposal, it would exercise significant discretion in determining whether a particular event affecting a security warranted a trading and quotation halt, and it would impose a halt only when it determines that halting trading and quotations in the security is the appropriate mechanism to protect investors and ensure a fair and orderly marketplace. According to NASD, its expanded trading and quotation halt authority would not be used to correct informational imbalances resulting from corporate news about an issuer because NASD does not have a listing or other agreement with the issuer and thus cannot compel the issuer to disclose material information.

NASD intends to announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval of the proposal. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval of the proposal.

III. Summary of Comments and NASD's Response

The Pink Sheets generally supported NASD's proposed rule change, but recommended several modifications. First, the Pink Sheets objected (except in the case of foreign regulatory halts) to NASD's proposal to impose a trading and quotation halt for more than four business days[14] because of the loss of ''piggyback'' eligibility under Rule 15c2–11 under the Act.[15] According to the Pink Sheets, if a NASD member cannot rely on the piggyback provision, the member would have to comply with the provisions of Rule 15c2–11, including submitting a new NASD Form 211 to NASD, before initiating or resuming quotations in the security. The Pink Sheets also suggested that, because NASD's proposed rule change does not provide a forum to facilitate the exercise of due process, NASD trading and quotation halts should be limited to four business days. In addition, the Pink Sheets noted that trading and quotation halts are an effective anti-fraud weapon and should be used accordingly. Finally, the Pink Sheets indicated that its proposed four business day limit on NASD trading and quotation halts should not apply in the case of foreign regulatory halts.

NASD, in Amendment No. 2, responded to the Pink Sheets' comments.[16] NASD reaffirmed its view that its proposed rule change is appropriate and furthers investor protection. In response to the Pink Sheets' concern about the potential loss of piggyback eligibility under Rule 15c2–11, NASD noted that it is critical to require market makers to review current information regarding the issuer, as set forth in Rule 15c2–11 under the Act. NASD indicated that such a ''restart'' of the Rule 15c2–11 process is appropriate and consistent with the operation of Rule 15c2–11 following a Commission-imposed trading suspension under Section 12(k) of the Act.[17] NASD also responded to the Pink Sheets' assertion that its proposed trading and quotation halt authority should be used more than just sparingly by explaining that its proposal clearly delineates the situations under which it would exercise its authority under the proposed rule. NASD noted that it intends to exercise the proposed trading and quotation halt authority in very limited circumstances to protect the market and investors, and does not believe this authority should be used liberally whenever there is a ''problem'' with a security.

In addressing the Pink Sheets'' concern that NASD trading and quotation halts in OTC Equity Securities would not be subject to due process, NASD stated that the proposed authority is consistent with its statutory obligations as a self-regulatory organization, including, among others, its responsibility under Section

[9] *See* NASD Rule 6610(d) (defining OTC Equity Security). The term ''OTC Equity Security'' also includes certain exchange-listed securities that do not otherwise qualify for real-time trade reporting because they are not ''eligible securities'' as defined in NASD Rule 6410(d). The term ''OTC Equity Security'' does not include ''restricted securities,'' as defined by Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market under the NASD Rule 5300 Series.

[10] Because the current NASD Rule 6500 Series relates solely to OTCBB securities, NASD is proposing to renumber NASD Rule 6545 as NASD Rule 6660, which would become part of the NASD rules relating to OTC Equity Securities.

[11] 17 CFR 240.10b–17.

[12] The proposed factors in IM–6660–1 that NASD may consider in determining whether to impose a trading and quotation halt under NASD Rule 6660(a)(3) include, but are not limited to: (1) the material nature of the event; (2) the material facts surrounding the event are undisputed and not in conflict; (3) the event has caused widespread confusion in the trading of the security; (4) there has been a material negative effect on the market for the subject security; (5) the potential exists for a major disruption to the marketplace; (6) there is significant uncertainty in the settlement and clearance process for the security; and/or (7) such other factors as NASD deems relevant in making its determination.

[13] The UPC Committee is a standing committee of NASD, currently consisting of six professionals in the securities industry. The UPC Committee has the authority to advise NASD on issues of interest and concern to the securities industry, including interpretations with respect to the UPC. According to NASD, NASD staff may present matters relating to possible trading and quotation halts to the UPC Committee from time to time. However, the role of the UPC Committee in this regard is advisory only. NASD stated that NASD staff would retain full power and authority to make all determinations under proposed NASD Rule 6660 and IM–6660–1.

[14] The Commission notes that under existing NASD Rule 6545, NASD can direct NASD members to halt trading and quotations in OTCBB securities for up to five business days.

[15] 17 CFR 240.15c2–11. Under the ''piggyback'' provision of Rule 15c2–11, broker-dealers can publish quotations for securities subject to the Rule as long as the security has been quoted on each of at least twelve days within the previous thirty calendar days with no more than four successive business days without a quotation.

[16] *See* Amendment No. 2, supra note 7.

[17] 15 U.S.C. 78*l*(k).

15A(b)(11) of the Act[18] to ''ensure fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.'' Further, NASD noted that not all determinations made by NASD staff are explicitly subject to a hearing process, and that decisions like trading and quotation halts require certainty and finality so that the marketplace can operate fairly and efficiently. NASD noted that a hearing process, even if adopted as part of its proposed rule, would not stay the trading and quotation halt or the Rule 15c2–11 process.

Finally, NASD explained that the term ''foreign regulatory halt'' in proposed NASD Rule 6660(a)(1) would include the Canadian provincial exchanges or markets. NASD noted, however, that, as proposed, it would not impose its own trading and quotation halt if a foreign regulatory halt covering a given security was imposed for material news, a regulatory filing deficiency, or operational reasons.

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, and NASD's response to the comment letter, and finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, including the provisions of Section 15A(b)(6) of the Act,[19] which requires, among other things, that NASD rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing transactions in securities, and, in general, to protect investors and the public interest, and Section 15A(b)(11) of the Act,[20] which requires, among other things, that NASD rules relating to quotations be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and to promote orderly procedures for collecting, distributing, and publishing quotations.[21]

The Commission believes that NASD's proposal to permit trading and quotation halts in OTC Equity Securities can benefit the marketplace and investors when an extraordinary event occurs that has had a material effect on the market for the OTC Equity Security or has caused or has the potential to cause major disruption to the marketplace or significant uncertainty in the settlement and clearance process. NASD Rule 6660 is designed to provide the marketplace with the opportunity to widely digest and disseminate the information that precipitated the market condition and provide NASD with the opportunity to consider whether further regulatory action is warranted in a particular circumstance.[22] The Commission believes that NASD's proposed trading and quotation halt rule for OTC Equity Securities, when appropriately applied under the circumstances specified in the proposed rule, is designed to foster the integrity of quotations for these securities and to promote the protection of investors and the public interest.

In particular, the Commission believes that NASD's proposal to expand its trading and quotation halt authority to situations involving extraordinary events with respect to OTC Equity Securities should enable NASD to impose trading and quotation halts in OTC Equity Securities under a broader set of circumstances than it may impose today for OTCBB securities. The Commission believes that the proposal is intended to strike a reasonable balance between NASD's interest in imposing trading and quotation halts for OTC Equity Securities under circumstances warranting a halt, while establishing a clear standard that limits the imposition of trading and quotation halts for these securities to exigent circumstances.

In the Commission's view, the proposed factors set forth in proposed IM–6660–1, to be considered by NASD when determining whether a trading and quotation halt would be the appropriate mechanism to protect investors and ensure a fair and orderly marketplace, would help provide transparency to NASD's trading and quotation halt process. The Commission believes that NASD's proposed factors are tailored to assist NASD's determination of whether an extraordinary event has occurred that warrants the imposition of a trading and quotation halt. The Commission further believes that NASD's ability to consult with the UPC Committee (or any successor thereto), in an advisory capacity only, as it deems necessary, is an appropriate mechanism for NASD staff to benefit from the insight of market professionals, while NASD retains ultimate authority to determine whether to impose a trading and quotation halt.

The Commission believes that it is appropriate for NASD to expand its authority to halt trading and quotation to all OTC Equity Securities. This proposal would enable NASD to impose trading and quotation halts in OTC Equity Securities that are quoted in trading venues other than, or in addition to, the OTCBB, and would thereby assist NASD in carrying out its self-regulatory responsibilities for the over-the-counter marketplace.

The Commission further believes that extending from five to ten the maximum number of business days for which NASD may impose a trading and quotation halt is reasonably designed to protect investors and the public interest and to foster the integrity of quotations for OTC Equity Securities. This change would provide NASD with the ability to impose a trading and quotation halt of up to ten business days in the event that NASD believes that, under the circumstances, a halt of this length is necessary to protect investors and ensure a fair and orderly marketplace.

Finally, the Commission notes that the proposal permits NASD to halt trading and quoting of an OTC Equity Security when NASD determines that an extraordinary event has occurred that, under NASD Rule 6660, justifies the imposition of such a halt. In such case, imposition of a trading and quotation halt would provide a measure of certainty and finality to the marketplace and investors. The Commission notes that NASD's administration of its proposed rule is subject to continuing Commission oversight, and that NASD, as a registered national securities association, remains bound by its obligations as a self-regulatory organization under the Act and all relevant rules and regulations thereunder.

For the reasons described above, the Commission believes that NASD's proposed rule change promotes the protection of investors and the public interest by expanding NASD's authority to direct NASD members to halt quotation and trading in an OTC Equity Security under appropriate circumstances.

[18] 15 U.S.C. 78*o*–3(b)(11).

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 15 U.S.C. 78*o*–3(b)(11).

[21] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] The Commission notes that quotations in an OTC Equity Security may not automatically resume when a trading and quotation halt expires. In particular, if a trading and quotation halt was in effect for more than four consecutive business days, the ''piggyback'' exception in Rule 15c2–11(f)(3) under the Act would not be available and, in that case, broker-dealers would be required to comply with the requirements of Rule 15c2–11 and NASD Rule 6740 before initiating or resuming quotations for the subject security.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR-NASD–2006–039), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22197 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54984; File No. SR–NASD–2006–135]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposal Relating to Implementation of Certain Approved Rule Changes Reflecting the Complete Separation of Nasdaq from NASD

December 20, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] 1 and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by NASD. NASD has filed this proposal pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder [4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD has filed a proposed rule change relating to a phased implementation of SR–NASD–2006–104, which was approved by the Commission on November 21, 2006.[5] Specifically, NASD is proposing to implement on December 20, 2006, amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan'') and the By-Laws of NASD, NASD Regulation and NASD Dispute Resolution, and the deletion of The Nasdaq Stock Market Inc. (''Nasdaq'') By-Laws, which were previously approved in SR–NASD–2006–104, to reflect Nasdaq's complete separation from NASD, and, on that same date, dissolve NASD's controlling share in Nasdaq.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On June 30, 2006, the Commission approved proposed rule change SR–NASD–2005–087, which, among other things, amended NASD's Delegation Plan, By-Laws and NASD rules to reflect the operation of The NASDAQ Stock Market LLC (the ''Nasdaq Exchange'') as a national securities exchange for Nasdaq-listed securities.[6] For a transitional period that commenced on August 1, 2006, the Nasdaq Exchange has been operating as an exchange for Nasdaq-listed securities only. Nasdaq, as a subsidiary of NASD, continues to perform its obligations under the Delegation Plan with respect to over-the-counter (''OTC'') quoting, trading and execution of non-Nasdaq exchange-listed securities, including the operation of, among other things, its SuperIntermarket (''SiM'') trading platform. Nasdaq no longer performs any functions under the Delegation Plan relating to Nasdaq-listed securities.

On November 21, 2006, the Commission approved SR–NASD–2006–104.[7] Pursuant to SR–NASD–2006–104, NASD proposed to delete the Nasdaq By-Laws and amend the Delegation Plan, the By-Laws of NASD, NASD Regulation and NASD Dispute Resolution, and NASD rules to reflect the separation of Nasdaq from NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities. In addition, NASD proposed to amend NASD rules for OTC quoting and trading in non-Nasdaq exchange-listed securities to reflect the manner in which NASD will be satisfying its regulatory obligations under the Exchange Act and the rules thereunder on a temporary basis until NASD's Alternative Display Facility (''ADF'') is able to satisfy those obligations (''Modified SiM Rules'').[8] Finally, NASD proposed to expand the scope of the NASD/Nasdaq Trade Reporting Facility rules to include trade reporting in non-Nasdaq exchange-listed securities and make other clarifying and conforming changes. As approved, SR–NASD–2006–104 will be effective on the date on which the Nasdaq Exchange operates as a national securities exchange with respect to non-Nasdaq exchange-listed securities. When SR–NASD–2006–104 was originally filed, that date was anticipated to be October 2006; however, it is now anticipated to be in the first quarter of 2007.

Separation of Nasdaq from NASD and Proposed Phased Implementation of SR–NASD–2006–104

As noted above, Nasdaq continues to exercise regulatory authority under the Delegation Plan. Therefore, NASD retains control of Nasdaq through a single share of Series D Preferred Stock (the ''Series D Share'') that allows NASD to cast a majority of the votes in any matter submitted to Nasdaq's stockholders, including the election of Nasdaq directors. Once the delegation to Nasdaq is no longer necessary, the Series D Share will automatically lose its voting rights and will be redeemed by Nasdaq for $1.00.

In light of the delay in implementation of portions of SR–NASD–2006–104, NASD is proposing to eliminate its delegation and effectuate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] ≤*See* Securities Exchange Act Release No. 54798, 71 FR 69156 (November 29, 2006) (order approving SR–NASD–2006–104).

[6] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR–NASD–2005–087).

[7] *See* note 5 supra.

[8] This is one of the conditions required by the Commission before the Nasdaq Exchange can operate as an exchange for non-Nasdaq exchange-listed securities. The Commission approved the Nasdaq Exchange application on January 13, 2006. *See* Securities Exchange Act Release No. 53128, 71 FR 3550 (January 23, 2006) (File No. 10–131). *See also* Securities Exchange Act Release No. 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006), which modified the conditions set forth in the Nasdaq Exchange approval order to allow the Nasdaq Exchange to operate as a national securities exchange solely with respect to Nasdaq-listed securities.

complete separation with Nasdaq, including dissolution of the Series D Share, prior to commencement of operation of the Nasdaq Exchange as an exchange for non-Nasdaq exchange-listed securities. However, for a transitional period, Nasdaq will continue to perform the same services it does today, including operation of the SiM trading platform, on NASD's behalf via the Transitional System and Regulatory Services Agreement. NASD anticipates that this transitional period will be brief, commencing on December 20, 2006 and concluding once SR–NASD–2006–104 is fully implemented in the first quarter of 2007.

To effectuate this phased implementation, NASD is proposing to implement on December 20, 2006 certain portions of SR–NASD–2006–104 to reflect the separation of Nasdaq from NASD and that Nasdaq will no longer be operating under the Delegation Plan. Specifically, NASD is proposing to: (1) Remove references in the Delegation Plan to Nasdaq as a subsidiary and remove the delegation of authority to Nasdaq (Section III) and the delegation of authority relating to Stockwatch (Section IV); (2) revise the NASD By-Laws, NASD Regulation By-Laws and NASD Dispute Resolution By-Laws to remove references to Nasdaq as a subsidiary of NASD; and (3) delete the Nasdaq By-Laws. During this transitional period, references to ''Nasdaq'' in NASD's rules shall be deemed to mean ''Nasdaq operating on behalf of NASD via the Transitional System and Regulatory Services Agreement.'' Additionally, NASD notes that during this transitional period, the Market Operations Review Committee, which was validly constituted pursuant to a delegation by the NASD Board, will continue to exist in its current form and perform the functions set forth in NASD Rules 5265 and 11890. All remaining changes approved in SR–NASD–2006–104 will become effective on the date upon which the Nasdaq Exchange operates as an exchange for non-Nasdaq exchange-listed securities.[9] As such, during this transitional period, there will be no changes from the perspective of users or participants of NASD facilities operated by Nasdaq.

NASD has filed the proposed rule change for immediate effectiveness. NASD is proposing that the operative date of the proposed rule change be December 20, 2006, the date on which NASD proposes to effectuate the complete separation of Nasdaq from NASD.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will provide an effective mechanism and regulatory framework for effectuating Nasdaq's complete separation from NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

NASD has requested that the Commission waive the 30-day operative delay under Rule 19b–4(f)(6)(iii),[13] and designate the proposed rule change effective immediately. The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay,[14] as such waiver is necessary so that the complete separation of Nasdaq from NASD can be effectuated on December 20, 2006.[15]

At any time within 60 days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NASD–2006–135 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–NASD–2006–135. 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

[9] As permitted by the terms of the Transitional System and Regulatory Services Agreement, NASD may, in its sole discretion, determine to continue to use Nasdaq as a vendor to operate SiM, even upon the Nasdaq Exchange's operation as an exchange for non-Nasdaq exchange-listed securities. In that event, the current rules relating to SiM will remain in place and the approved rule changes in SR–NASD–2006–104 relating to Modified SiM Rules will not be implemented. All other rule changes that are part of SR–NASD–2006–104 (*e.g.*, amendments to the NASD/Nasdaq Trade Reporting Facility Rules) will become operative upon the operation of NASD's ADF for non-Nasdaq exchange-listed securities as approved by the Commission on September 28, 2006. *See* Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR–NASD–2006–91). NASD will submit a filing to the Commission to effectuate this.

[10] 15 U.S.C. 78o–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). As required by Rule 19b–4(f)(6)(iii) of the Act, NASD provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] Furthermore, the amendments proposed herein were subject to notice and comment and approved by the Commission on November 21, 2006. See note 5 supra.

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–135 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22199 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54970; File No. SR–NYSE–2006–114]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Exchange Rule 123A.30 to Eliminate the Two Tick Rule to Allow for the Execution of CAP-DI Orders at Consecutive Destabilizing Prices Without Floor Official Approval

December 19, 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 December 14, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 is proposing to amend Exchange Rule 123A.30 to allow a CAP-DI order to be executed at consecutive destabilizing prices without Floor Official approval.

The text of the proposed rule change is available at NYSE, the Commission's Public Reference Room, and www.nyse.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

Exchange Rules 13 and 123A.30 describe a type of percentage order[5] called a ''convert and parity, destabilizing, immediate-or-cancel'' (CAP-DI) order and the manner in which such orders are elected or converted and executed.

CAP-DI orders are ''elected'' into limit orders when a trade on the Exchange occurs at or within a CAP-DI order's limit price. The size and price of such limit order is the same as the electing trade. The election and execution of CAP-DI orders is automatic.

CAP-DI orders may also be ''converted'' into limit orders to trade with the NYSE bid and offer or to establish a new NYSE best bid or offer as prescribed by Rule 123A.30. When first adopted, CAP-DI orders were converted by specialists in accordance with the instructions of the Floor broker who entered the order. Today, CAP-DI orders are automatically converted and trade in certain situations—when the specialist trades for its dealer account in an automatic execution.[6] In that situation, CAP-DI orders that have been entered and are capable of trading at that price are automatically converted and trade along with the specialist.[7] This process benefits customers by ensuring that CAP-DI orders are executed in accordance with their expectations—*i.e.* that they participate in NYSE trades at or within their limit and thereby do not lag behind the market.

The ''D'' designation on CAP-DI orders stands for ''destabilizing'' and allows the order to be converted to participate in stabilizing or destabilizing transactions[8] or to bid (offer) in a destabilizing manner.[9]

The ''I'' designation of the CAP-DI order stands for ''immediate execution or cancel'' and allows for the cancellation of any converted portion of the order that is not executed immediately at the price of the electing transaction or better. Any portion that is not immediately executed reverts to its status as a CAP-DI order, eligible for subsequent election or conversion and execution.

CAP-DI orders are subject to certain restrictions on conversions to trade and quote that were intended to minimize the specialist's ability to move the price direction of a security through the conversion of the CAP-DI orders.[10] Thus, Exchange Rule 123A.30 provides that CAP-DI orders may not be converted ''at consecutively higher or lower prices such that consecutive up or down ticks (as the case may be), follow one another in rapid succession, unless [the specialist] obtains the prior

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Percentage orders are limited price orders to buy or sell a certain volume of the specified security after a trade occurs at or within the order's limit. As such, all percentage orders, including CAP-DI orders, are referred to as ''go along orders'' because they generally want to trade at prices established by other market participants and do not want to initiate a significant price change or lag behind the market.

[6] This occurs either because the specialist has algorithmically generated a trading message or is part of a quote that is automatically executed.

[7] By its terms (convert and parity), specialists and CAP-DI orders trade on parity.

[8] A ''destabilizing'' trade is a trade that follows the direction of the market as, for example, a purchase on a plus tick or a sale on a minus tick. A stabilizing trade is one that counters the direction of the market as, for example, a purchase on a minus tick or a sale on a plus tick.

[9] Rule 123A.30 sets forth certain size and maximum price restrictions on CAP-DI conversions. The Exchange is not proposing to amend these requirements.

[10] *See* Securities Exchange Act Release No. 24505 (May 22, 1987), 52 FR 20484 (June 1, 1987) (SR–NYSE–85–1) (approving amendment to Rule 123A.30 permitting conversion of percentage orders on destabilizing ticks under certain restrictions).

approval of a Floor Governor, Senior Floor Official, or Executive Floor Official'' (hereinafter, ''two tick rule'').

However, as a result of the automatic conversion and execution process described above, it is possible for CAP-DI orders to trade at prices inconsistent with the two tick rule, given the inability to pause the automatic execution of these orders to allow for compliance with a slow, manual Floor Official approval process.

In addition, the two tick rule was adopted at a time when the Exchange traded in ''eighths'' or increments of twelve and a half cents.[11] As a result, a two tick movement equaled a price change of twenty-five cents. Today, after the move to decimal pricing, stocks trade in one cent increments; a two-tick movement, therefore, is only two cents.

Accordingly, the Exchange seeks to remove the two tick rule and the related requirement for Floor Official approval. The automatic conversion and execution of CAP-DI orders when the specialist trades provides an experience for the customer that is consistent with his or her trading expectations. It also limits the risk to the CAP-DI order of missing the market that is inherent with a manual conversion and execution process in an automatic execution environment. Further, it eliminates the possibility that specialists' permissible trading occurs at prices better than that received by a customer order, when such order was marketable at the price the specialist received.

Further, while the two tick rule made sense when minimum price variations were wide and each tick change covered multiple cents, it is overly restrictive in today's decimalized market. Similarly, the conversion limitation was consistent with specialist stabilization rules that precluded certain proprietary trading without Floor Official approval. Changes in these rules support this proposal.[12] Lastly, Rule 123A.30 will continue to limit the price at which converted shares can participate in a destabilizing transaction.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[14] and furthers the objectives of Section 6(b)(5) of the Act in particular,[15] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1) of the Act in that it seeks to assure economically efficient execution of securities transactions.[16]

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 The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to immediately implement the proposed rule change. The Exchange believes that waiver of the 30-day delay is appropriate because the proposed rule change seeks to assure the economically efficient execution of securities transactions through the automatic conversion and execution of CAP-DI orders when the specialist trades.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the Exchange to immediately eliminate the two tick rule so that CAP-DI orders can be converted to trade along with the specialist. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2006–114 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

[11] While other sections of the rule were amended to reflect decimal pricing, this portion was not. *See* Securities Exchange Act Release No. 43230 (August 30, 2000), 65 FR 54589 (September 8, 2000) (SR–NYSE–00–22).

[12] *See* Securities and Exchange Act Release No. 54860 (December 1, 2006) 71 FR 71221 (December 8, 2006) (NYSE–2006–76).

[13] Rule 123A.30 allows conversions to effect destabilizing trades where the transaction for which the CAP-DI order is being converted is for: (1) less than 10,000 shares or an amount of stock having a market value less than $500,000, and the price at which the converted order is to be executed is no more than $0.10 away from the last sale price, or (2) 10,000 shares or more or valued at $500,000 or more, and the price at which the trade is to take place is no more than $0.25 from the last sale.

Telephone Conversation between Deanna Logan, Director, Office of the General Counsel, NYSE, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on December 19, 2006.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is also required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five days prior to the date of filing.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–114. 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*
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 NYSE. 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–NYSE–2006–114 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22196 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54977; File No. SR–NYSE–2006–116]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendment of Annual Report Timely Filing Requirements

December 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2006, the New York Stock Exchange LLC (''NYSE'' 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 substantially 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 Section 802.01E of its Listed Company Manual (''Manual'') to end as of December 31, 2007 the Exchange's discretion to continue the listing of certain companies that are twelve months late in filing their annual reports with the Commission. The text of the proposed rule change is available on the Exchange's Web site, *http://www.nyse.com*, at the Exchange's Office of the Secretary, 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 NYSE 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section 802.01E of the Manual to end as of December 31, 2007 the Exchange's discretion to continue the listing of certain companies that are twelve months late in filing their annual reports with the Commission.

Section 802.01E of the Manual provides that if a company fails to timely file a periodic annual report with the Commission, the Exchange will monitor the company and the status of the filing. If the company fails to file the annual report within six months from the filing due date, the Exchange may, in its sole discretion, allow the company's securities to be traded for up to an additional six-month trading period depending on the company's specific circumstances; but in any event if the company does not file its periodic annual report by the end of the one year period (''Initial Twelve-Month Period''), the Exchange will begin suspension and delisting procedures in accordance with the procedures in Section 804.00 of the Manual.

Section 802.01E states that, in certain unique circumstances, a listed company that is delayed in filing its annual report beyond the Initial Twelve-Month Period may have a position in the market (relating to both the nature of its business and its very large publicly-held market capitalization) such that its delisting from the Exchange would be significantly contrary to the national interest and the interests of public investors. In such a case, where the Exchange believes that the company remains suitable for listing given, among other factors,[3] its relative financial health and compliance with the NYSE's quantitative and qualitative listing standards, and where there is a reasonable expectation that the company will be able to resume timely filings in the future, the Exchange may forebear, at its sole discretion, from commencing suspension and delisting, notwithstanding the company's failure to file within the time periods specified in Section 802.01E of the Manual.

After discussions with the Commission staff, the Exchange has determined that it is unnecessary for the Exchange to retain the discretion to allow companies to continue listing beyond the Initial Twelve-Month Period after December 31, 2007. Therefore, under this proposed amendment, the Exchange's discretion to allow a company to continue listing beyond the Initial Twelve-Month Period set forth in Section 802.01E of the Manual shall expire on December 31, 2007. If, prior to December 31, 2007, the Exchange had determined to continue listing a company beyond the Initial Twelve-Month Period under the circumstances specified in Section 802.01E of the Manual as described above, and the company fails to file its periodic annual report by December 31, 2007, suspension and delisting procedures will commence in accordance with the procedures set out in Section 804.00 of the Manual.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Section 802.01E of the Manual for a complete list of the factors which the Exchange must consider when determining whether to continue listing a company beyond the Initial Twelve-Month Period.

6(b)(5)[4] of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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

The Exchange did not solicit or receive any written comments with respect to the proposed rule change.

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 the 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 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–NYSE–2006–116 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–NYSE–2006–116. 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-NYSE–2006–116 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22201 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54986; File No. SR–NYSEArca-2006–58]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Its Regulatory Oversight Committee

December 21, 2006.

On September 21, 2006, NYSE Arca, Inc. (''NYSE Arca'' 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 NYSE Arca Rule 3.3 to provide that the Exchange's Regulatory Oversight Committee (the ''ROC'') shall be comprised of at least three Public Directors, rather than all the Public Directors. On October 20, 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 October 27, 2006.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6(b)(5) of the Act.[5] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission notes that the proposed rule change, by establishing a minimum committee size for the ROC, would allow the Exchange to reduce the ROC to three members. The Commission notes that the proposed rule change would retain the requirement that all members of the ROC be Public Directors.[6] Accordingly, the Commission finds that the proposed rule change, as amended, is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSEArca-2006–58), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22261 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] See Securities Exchange Act Release No. 54638 (October 23, 2006), 71 FR 63059.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] NYSE Arca's By-Laws define a ''Public Director'' as a person from the public who will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates. See Section 3.02 of the NYSE Arca By-Laws.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54981; File No. SR–Phlx–2006–86]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Imposing a License Fee in Connection with the Firm-Related Equity Option and Index Option Fee Cap

December 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. Phlx has designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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

Phlx proposes to amend its schedule of fees to adopt a license fee of $0.10 for the Hapoalim American Israeli Index™ (traded under the symbol HAI (''HAI'')) [5] to be assessed per contract side for index option ''firm'' transactions (comprised of index option firm (proprietary and customer executions) comparison transactions, index option firm/proprietary transactions and index option firm/proprietary facilitation transactions). This license fee will be imposed only after the Exchange's $60,000 ''firm-related'' equity option and index option comparison and transaction charge cap, described more fully below, is reached.

The text of the proposed rule change is available on Phlx's Web site at *http://www.phlx.com*, at the Office of the Secretary at Phlx, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] ''Hapoalim American Israeli Index'' is a trademark of Hapoalim Securities USA, Inc. and has been licensed for use by the Exchange.

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 proposal. 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

Currently, the Exchange imposes a cap of $60,000 per member organization [6] on all ''firm-related'' equity option and index option comparison and transaction charges combined.[7] Specifically, ''firm-related'' charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm (proprietary and customer executions) comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively the ''firm-related charges''). Thus, such firm-related charges in the aggregate for one billing month may not exceed $60,000 per month per member organization.

The Exchange also imposes a license fee of $0.10 per contract side for equity option and index option ''firm'' transactions on certain licensed products (collectively ''licensed products'') after the $60,000 cap, as described above, is reached.[8] Therefore, when a member organization exceeds the $60,000 cap (comprised of combined firm-related charges), the member organization is charged $60,000, plus license fees of $0.10 per contract side for any contracts in licensed products (if any) over those that were included in reaching the $60,000 cap. In other words, if the cap is reached, the $0.10 license fee is imposed on all subsequent equity option and index option firm transactions; these license fees are charged in addition to the $60,000 cap.

The Exchange proposes to adopt a $0.10 license fee per contract side for HAI for index option firm transactions, which will be imposed after the $60,000 cap is reached in the same way as the current licensed product fees are assessed. Thus, when a member organization exceeds the $60,000 cap, the member organization will be charged $60,000 plus any applicable license fees for trades of licensed products, including HAI, over those trades that were counted in reaching the $60,000 cap.[9]

This proposal is scheduled to become effective for transactions settling on or after December 14, 2006.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange 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.

[6] The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations will be required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles (''GAAP''). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, will be accepted. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–00–85).

[7] *See* Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (SR–Phlx–2004–94).

[8] For a complete list of the licensed products that are assessed a $0.10 license fee per contract side after the $60,000 cap is reached, see $60,000 ''Firm Related'' Equity Option and Index Option Cap on the Exchange's fee schedule.

[9] Consistent with current practice, when calculating the $60,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products without license fees and then equity option and index option transaction and comparison charges for products with license fees (*i.e.*, IWF license fees) that are assessed by the Exchange after the $60,000 cap is reached. *See* Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR–Phlx–2004–70).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder [13] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–86 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–Phlx–2006–86. 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 Phlx. 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–Phlx–2006–86 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22192 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54973; File No. SR–Phlx–2006–82]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Addition of the Hapoalim Israeli American Index to Rule 1101A

December 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Phlx filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 Phlx proposes to add the Hapoalim American Israeli Index (''Hapoalim Index'' or ''Index'') to Phlx Rule 1101A, which would enable the Exchange to list and trade options on the Hapoalim Index at $2.50 or greater strike price intervals if the strike price is less than $200.[5]

The text of the proposed Exchange rule is set forth immediately below, with deletions [bracketed] and additions in italics.

Rule 1101A.

Terms of Option Contracts

(a) The Exchange shall determine fixed point intervals of exercise prices for index options (options on indexes). Generally, the exercise (strike) price intervals will be no less than $5; provided, that the Exchange may determine to list strike prices at no less than $2.50 intervals for options on the following indexes (which may also be known as sector indexes):

(i)—(xxviii)—No Change.

(xxix) Wellspring Bioclinical Trials Index™, if the strike price is less than $200[.],

(xxx) Hapoalim American Israeli Index or Hapoalim Index, if the strike price is less than $200.

Remainder of (a)—No Change.

(b)—(c)—No Change.

Commentary—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange has recently entered into a license with Hapoalim Securities USA, Inc. that would, among other things, allow it to list and trade options on the Index.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed amendment is to add the Hapoalim Index to Rule 1101A, which would allow the Exchange to list options on the Index at $2.50 strike price intervals if the strike price is less than $200.

Exchange Rule 1101A currently indicates that the Exchange shall determine fixed point strike price intervals for index options at no less than $5.00, provided that for indexes that are listed in Rule 1101A the Exchange may determine to list strike prices at no less than $2.50 intervals if the strike price is less than $200. The proposed rule change adds the Hapoalim Index to the list of indexes in Rule 1101A upon which the Exchange may list options at $2.50 strike price intervals.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by allowing options on the Hapoalim Index to be listed at $2.50 strike price intervals similarly to options on other indexes listed on the Exchange.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to offer additional strike prices for options on the Hapoalim Index to investors without delay. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[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 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–Phlx–2006–82 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–Phlx–2006–82. 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 Phlx. 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–Phlx–2006–82 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22194 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). When filing a proposed rule change pursuant to Rule 19b–4(f)(6) under the Act, an Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange provided notice to the Commission four business days prior to filing the proposed rule change, and the Commission has determined to waive the five business day requirement.

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54978; File No. SR–Phlx-2006–63]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to a Philadelphia Board of Trade Enterprise License Fee For Dissemination of Certain Market Data

December 20, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 substantially prepared by the Phlx. The Phlx filed Amendment No. 1 to the proposed rule change on November 1, 2006.[3] The Phlx filed Amendment No. 2 to the proposed rule change on December 20, 2006.[4] 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 Phlx proposes to add an Enterprise License Fee of $10,000 per year or $850 per month that would be assessed by the Exchange's wholly owned subsidiary, the Philadelphia Board of Trade (''PBOT''), on eligible market data vendors or subvendors (collectively ''Vendors'') for certain index values received over PBOT's Market Data Distribution Network (''MDDN'').[5] The text of the proposed rule change is available at Phlx, the Commission's Public Reference Room, and *http://www.phlx.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 Phlx 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 Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add an Enterprise License Fee for eligible Vendors of market data disseminated over PBOT's MDDN. Phlx has licensed market data in the form of current and closing index values underlying most of Phlx's proprietary indexes to PBOT for the purpose of selling, reproducing, and distributing the index values over the MDDN (''Market Data''). The Exchange or its third party designee objectively calculates and makes available to PBOT real-time index values every 15 seconds and closing index values at the end of each trading day. Pursuant to agreements with PBOT, Market Data Vendors will make the real-time Market Data widely available to subscribers.[6]

On May 11, 2006, the Commission approved the Exchange's proposal to allow PBOT to charge subscriber fees to Vendors of Market Data for all the values of Phlx's proprietary indexes disseminated by PBOT's MDDN.[7] The subscriber fees are set out in agreements that PBOT executes with various Market Data Vendors for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN. The fees approved by the Commission in its May 11, 2006 approval order include: a monthly fee of: (a) $ 1.00 per ''Device,'' as defined in the Market Data agreements,[8] that is used by Vendors and their subscribers to receive and re-transmit Market Data on a real-time basis (''device fee''), and (b) $.00025 per request for snapshot data, which is essentially Market Data that is refreshed no more frequently than once every 60 seconds,[9] or $1,500 per month for unlimited snapshot data requests (''snapshot fee'').[10]

The Exchange now proposes to add an Enterprise License Fee that would be available to eligible Vendors as an alternative to the device fee or snapshot fee.[11] Specifically, where a Vendor is a firm acting as a retail broker-dealer conducting a material portion of its business via one or more proprietary Internet Web sites by which such firm distributes Market Data to predominately non-professional Market Data users with whom such firm has a brokerage relationship (''Eligible Firm''),[12] that Eligible Firm may pay an Enterprise License Fee of $10,000 per year or $850 per month for its receipt and re-transmittal of Market Data. An Eligible Firm may also distribute Market Data to professional users with whom such firm has a brokerage relationship, provided such Market Data distribution is predominantly to non-professional users.[13] Market Data distribution will be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] Amendment No. 2 replaces and supersedes the original filing in its entirety.

[5] The MDDN is an Internet protocol multicast network developed by PBOT and SAVVIS Communications for the purpose of transmitting index values.

[6] PBOT has contracted with one or more major Market Data Vendors to receive real-time and closing index values over the MDDN and promptly redistribute such values.

[7] *See* Securities Exchange Act Release No. 53790 (May 11, 2006), 71 FR 28738 (May 17, 2006) (SR–Phlx-2006–04).

[8] The definition of ''Device'' in the agreements is complex and incorporates a number of other defined terms. The agreements provide that ''Device'' shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End User. A Subscriber's Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber's access to Vendor's data. By way of further explanation, an ''End User'' is an individual authorized or allowed by a Vendor to access and display real-time market data that is distributed by PBOT over the MDDN; and a ''Terminal'' is any type of equipment (fixed or portable) that accesses and displays such market data.

[9] The Exchange has filed SR–Phlx-2006–59 proposing to increase the snapshot data fee to $.0025 per request. *See* Securities Exchange Act Release No. 54890 (December 7, 2006), 71 FR 74975 (December 13, 2006) (SR–Phlx-2006–59).

[10] The index values may also be made available by Vendors on a delayed basis (*i.e.*, no sooner than twenty minutes following receipt of the data by vendors) at no charge.

[11] A firm that qualifies for the Enterprise License Fee may instead choose to pay the device fee and/or the snapshot fee as appropriate.

[12] To be eligible for the Enterprise License Fee, the Exchange would view a retail broker dealer as conducting a material portion of its business via one or more Internet websites if at least twenty percent (20%) of the broker dealer's business were conducted via the Internet.

[13] A non-professional user is defined in the fee schedule as any natural person who is not: (a) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (b) engaged as an ''investment advisor'' as that term is defined in Section 202(11) of the Investment Advisors Act of 1940, 15 U.S.C. 80b–2(11), (whether or not registered or qualified under that Act); nor, (c) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such

considered to be ''predominantly to non-professional users'' so long as the Eligible Firm's Market Data distribution to professional users when compared to Market Data distribution to all (professional and non-professional) users does not exceed 10%.[14]

To be eligible for the Enterprise License Fee, an Eligible Firm shall have to certify to PBOT that it qualifies for the Enterprise License Fee, including in regard to distribution to professional and non-professional users, and shall need to immediately notify PBOT if it can no longer certify its qualification.[15]

In developing the Enterprise License Fee, PBOT considered inquiries from actual and potential broker dealer data recipients regarding the availability of an Enterprise License for data transmitted over the MDDN and considered that certain industry organizations have offered fee structures that are available to some but not all data recipients, similarly to the Enterprise License Fee.[16] The Exchange believes that the proposed fee of $10,000 per year or $850 per month is fair and reasonable and consistent with industry practice.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by providing an alternate fee structure to market data recipients and thereby encouraging re-distribution of such data. The Exchange believes that its proposal, which is designed to encourage dissemination of market data, is likewise consistent with Section 6(b)(4) of the Act[19] in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities as described herein.

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

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 Exchange 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 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx-2006–63 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-Phlx-2006–63. 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 Phlx. 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–Phlx-2006–63 and should be submitted on or before January 18, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E6–22252 Filed 12–27–06; 8:45 am]

BILLING CODE 8011–01–P

functions were performed for an organization not so exempt.

[14] As an example, if data recipient ABC Corp. has 100 customers that receive PBOT Market Data of which 10 are professional users and 90 are retail (non-professional) users the Enterprise License Fee would be available to the firm because 10 professional users / 100 total users = 10%.

[15] A firm that has entered into an agreement with PBOT to receive Market Data over the MDDN but is not qualified for the Enterprise License Fee may pay the device fee and/or the snapshot fee as appropriate.

[16] For example, the Nasdaq Stock Market, Inc. (''Nasdaq''), a self regulatory organization, has fee schedules that are as much as twenty times higher for professional or corporate subscribers than for non-professional subscribers for UTP Level 1 fees, TotalView fees and Nasdaq MAX fees; and offers a TotalView Non-Professional Enterprise Fee License to qualified firms that distribute TotalView to their non-professional users with whom they have a professional relationship. The Options Price Reporting Authority (''OPRA''), a national market system, offers an Enterprise Professional Subscriber Fee to certain professional options data subscribers (these professional subscribers do not qualify for the reduced fees charged to nonprofessional subscribers) that is based on the number of professional users that the subscribers have instead of the number of devices. In addition, the Exchange believes that some industry data vendors offer different fee structures to qualified data recipients.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(4).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5655]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Dead Sea Scrolls''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et*

seq.), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Dead Sea Scrolls'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the San Diego Natural History Museum, San Diego, California, from on or about June 29, 2007, until on or about January 15, 2008, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 20, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–22319 Filed 12–27–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5656]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Near East Asia—South Asia Undergraduate Exchange Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/NEA–SCA–07–01.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates:

Application Deadline: February 15, 2007.

Executive Summary: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the FY2007 Near East and South Asia Undergraduate Exchange Program. Consortia of accredited, post-secondary educational institutions and public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) in the United States may submit proposals to organize and carry out academic exchange activities for students from underrepresented sectors in the Middle East, North Africa and South Asia (eligible countries and locales are listed below in the Purpose section). The grantee organization will be responsible for the following aspects of the program: placement of no less than 150 foreign students at accredited U.S. institutions for a semester or academic year, student travel to the U.S., orientation, enrichment programming, advising, monitoring and support, pre-return activities, evaluation, and follow-up with program alumni. It is anticipated that the total amount of funding for FY2007 administrative and program costs will be $3,000,000.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations* * *and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The principal objective of the Near East and South Asia Undergraduate Exchange Program (herein referred to as the ''Undergraduate Program'') is to provide a substantive exchange experience at a U.S. college or university to a diverse group of emerging student leaders from underrepresented sectors in the Middle East, North Africa and South Asia. In this context, the cooperating organization should ensure that participants are able to enroll full-time in courses at U.S. institutions alongside American peers, and provide the participants with opportunities to understand America and Americans inside and outside the classroom.

Participants will return to their home countries at the conclusion of the exchange program to re-enter colleges and universities there, and re-integrate with their home societies. It is also an objective of the program to provide participants with tailored instruction in the academic skills and study habits required to be successful at the undergraduate level.

The Undergraduate Program will provide no less than 150 scholarships: Approximately 40 scholarships for one academic year and 110 for one semester, at U.S. institutions of higher education to outstanding students from non-elite sectors from the Near East (countries/locales may include Algeria, Bahrain, Egypt, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, Yemen, West Bank/Gaza) and South Asia (India, Pakistan, and Bangladesh). Scholarships will be granted primarily to students who are currently enrolled in an undergraduate degree program in their home country. Participants may range from those about to enter university in their home country to those who have just completed their undergraduate degree, and those between these two stages. The cooperating organization will place one-semester program participants and academic-year participants in non-degree programs at both U.S. four-year colleges and universities, and community colleges.

The cooperating organization should develop enrichment activities to enhance the participants' academic education, including having students make local presentations about their countries, community service, and internships. All participants are required to return to their home countries immediately upon the conclusion of the program. Transfers of academic program or visa sponsorship of participants to another U.S. institution will not be considered.

ECA will award one cooperative agreement for this program. Programs and projects must conform with Bureau requirements and guidelines outlined in the Solicitation Package. ECA programs are subject to the availability of funds.

Programs must comply with J–1 Visa regulations. Please refer to the Solicitation Package for further information.

In a cooperative agreement, the Near East, South and Central Asia Branch of the Office of Academic Exchange Programs in the Bureau of Educational and Cultural Affairs (ECA/A/E/NEA–SCA) is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/E/NEA–SCA activities and responsibilities for this program are, but not limited to, the following:

1. Participating in the design and direction of program activities;
2. Approval of key personnel;
3. Final selection of program participants;
4. Approval and input for all program agendas and timelines;
5. Final approval of all student placements;
6. Guidance in execution of all project components;
7. Arrangement for State Department speakers during workshops;
8. Assistance with participant emergencies;
9. Providing background information related to participants' home countries and cultures; and
10. Liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department.

Note: All materials, publicity, and correspondence related to the program must acknowledge this as a program of the Bureau of Educational and Cultural Affairs, U.S. Department of State. The Bureau will retain copyright use of and distribute materials related to this program is it sees fit.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY2007.

Approximate Total Funding: $3,000,000.

Approximate Number of Awards: 1.

Anticipated Award Date: Pending availability of funds, the anticipated program start date will be April 2, 2007.

Anticipated Project Completion Date: December 31, 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by accredited, post-secondary educational institutions and public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost-Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition.

However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

a. Bureau grant guidelines require that organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in the amount of $3,000,000 to support the program and administrative costs required to implement the program. Therefore, applicant organizations with less then four years experience in conducting international exchange programs are ineligible.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package: Please contact the Near East, South and Central Asia Branch, Office of Academic Exchange Programs, ECA/A/E/NEA–SCA, Room 252, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–453–8096, Fax: 202–453–8095 or *AlamiLT@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/NEA–SCA–07–01 located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Program Officer, Laura Alami and refer to the Funding Opportunity Number ECA/A/E/NEA–SCA–07–01 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under

IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please refer to the solicitation package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa: The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes*. *Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: i.e., sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements, etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

1. Participant expenses.
2. Administrative costs.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: Thursday, February 15, 2007.

Reference Number: ECA/A/E/NEA-SCA–07–01.

Methods of Submission:

Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1. Submitting Printed Applications.

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/E/NEA–SCA–07–01, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassies for their review.

IV.3f.2—Submitting Electronic Applications. Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time, e-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. Ability to achieve program objectives: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Multiplier effect/impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. Institution's Record/Capacity: Proposals should demonstrate an

institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. Proposals should demonstrate capacity to place students at geographically diverse, accredited small colleges and universities that can provide students personalized attention. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. Project Evaluation and Follow-on: Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Proposals should also provide a plan for continued follow-on activity (with minimal Bureau support) ensuring that Bureau supported programs are not isolated events.

7. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants*; *http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI*.

VI.3 Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;

2. Quarterly program and financial reports that should include record program activities from that period.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information).

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Optional Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Laura Alami, Near East, South and Central Asia Branch, Office of Academic Exchange Programs, ECA/A/E/NEA–SCA, Room 252, ECA/A/E/NEA–SCA–07–01, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, 202–453–8096 and Fax: 202–453–8095, *http://www.exchanges.state.gov*.

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/NEA–SCA–07–01. Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 21, 2006.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–22321 Filed 12–27–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5657]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Study of the United States Institutes for Student Leaders Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/USS–07-SL.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: Summer 2007.

Application Deadline: February 16, 2007.

Executive Summary: The Branch for the Study of the United States, Office of Academic Exchange Programs, invites proposal submissions for the design and implementation of nine Study of the United States Institutes for Student Leaders, to take place over the course of five weeks. While the majority of Institutes should take place during Summer 2007, scheduling of each Institute should take into consideration the academic calendar of the participants' home country(ies). The Institutes should be similar in structure and content, take place at U.S. academic institutions, and provide groups of highly motivated undergraduate students from the countries and regions noted below with an integrated academic and educational travel program that will give them a deeper understanding of U.S. society and culture, while at the same time enhancing their leadership skills.

Each Institute will host up to 20 participants, for a total of approximately 180 students. ECA plans to award a single grant for the administration of nine Study of the U.S. Institutes. The awarding of the grant for this program is contingent upon the availability of FY–2007 funds.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose

Study of the U.S. Institutes for Student Leaders are intensive academic programs whose purpose is to provide groups of undergraduate student leaders with a deeper understanding of the United States, while simultaneously enhancing their leadership skills.

The principal objective of the Institutes is to heighten the participants' awareness of the history and evolution of U.S. society, culture, values and institutions, broadly defined. In this context, the Institutes should incorporate a focus on contemporary American life, as it is shaped by historical and/or current political, social, and economic issues and debates. The role and influence of principles and values such as democracy, the rule of law, individual rights, freedom of expression, equality, diversity and tolerance should be addressed.

In addition to promoting a better understanding of the United States, an important objective of the Institutes is to develop the participants' leadership and collective problem-solving skills. In this context, the academic program should include group discussions, training and exercises that focus on such topics as the essential attributes of leadership, teambuilding, collective problem-solving skills, effective communication, and management skills for diverse organizational settings. There should also be a community service component, in which the students experience firsthand how not-for-profit organizations and volunteerism play a key role in American civil society.

Local site visits and educational travel should provide opportunities to observe varied aspects of American life and to discuss lessons learned in the academic program. The program should also include opportunities for participants to meet American citizens from a variety of backgrounds, to interact with their American peers, and to speak to appropriate student and civic groups about their experiences and life in their home countries.

Administering Organization

The Bureau is seeking detailed proposals for the Institutes from public and private non-profit organizations, or consortia of such organizations with expertise in administering academic exchange programs, which will administer the Institute directly or in collaboration with partner institutions. Consortia must designate a lead institution to receive the grant award. Organizations that opt to work in sub-grant arrangements should clearly outline all duties and responsibilities of the partner organization, ideally in the form of sub-grant agreements and accompanying budgets.

Each institute should take place on a U.S. college or university campus. Host institutions must be selected from among accredited four-year liberal arts colleges, community colleges, universities, other not-for-profit academic organizations or a consortia of these institutions that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, American studies, and/or other disciplines or sub-disciplines related to the study of the United States.

Organizations or consortia applying for this grant must demonstrate their (or their partners') capacity for conducting projects of this nature. ECA strongly prefers that each institution host only one institute.

Program Design

Each Study of the U.S. Institute for Student Leaders should provide a group of up to 20 students with a uniquely designed program that focuses on U.S. society and culture. Each Institute will consist of a challenging academic program, as well as educational travel to illustrate the various topics explored in class.

Each program should be five weeks in length; participants will spend four weeks at the host institution for the academic program, and approximately one week on the related educational study tour, including two to three days in Washington, DC, at the conclusion of the Institute. The educational travel component should directly complement the academic program, and should include visits to cities and other sites of interest in the region around the host institution.

Each Institute should be designed as an intensive academic program with an educational travel component that is organized through a carefully integrated series of panel presentations, seminar discussions, debates, individual and group activities, lectures and reading assignments, as well as local site visits, regional educational travel, and participation in community service activities.

The Institute must not simply replicate existing or previous lectures, workshops, or group activities designed for American students. Rather, it should

be a specially designed and well-integrated seminar that creatively combines lectures, discussions, readings, debates, local site visits and educational travel into a coherent whole. The grantee institution should take into account that the participants may have little or no prior knowledge of the United States and varying degrees of experience in expressing their opinions in a classroom setting; it should tailor the curriculum and classroom activities accordingly. Every effort should be made to encourage active student participation in all aspects of the Institute. The program should provide ample time and opportunity for discussion and interaction among students, lecturers and guest speakers, not simply standard lectures or broad survey reading assignments. Reading and writing assignments should be adjusted to the participants' familiarity with English.

Applicants are encouraged to select accredited four-year liberal arts colleges, community colleges, universities, academic organizations or a consortia of these institutions to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions, as well as upon the nationally recognized expertise of scholars and other experts throughout the United States.

Program Administration

The grantee organization should designate a project director to oversee all of the Institutes, coordinate logistical and administrative arrangements, ensure an appropriate level of continuity between the various host institution programs, and serve as the principal liaison between ECA and all the host institutions and thus, ECA's primary point of contact.

The grantee organization should also designate an academic director at each host institution who will be present throughout the program to ensure the continuity, coherence and integration of all aspects of the academic program, including the related educational study tour. In addition to the academic director, an administrative coordinator should be assigned at each host institution to oversee all student support services, including supervision of the program participants and budgetary, logistical, and other administrative arrangements. For purposes of this program, it is important that the grantee organization also retain qualified mentors or escorts at each host institution who exhibit cultural sensitivity, an understanding of the program's objectives, and a willingness to accompany the students throughout the program.

Participants

Participants will be identified and nominated by the U.S. Embassies, Consulates and/or Fulbright Commissions in the participating countries, with final selection made by ECA. Each Institute will host up to 20 participants, for a total of approximately 180 students. Participation in the nine Institutes will be organized by country, or region, as follows:

(1) Nigeria, Kenya, South Africa.
(2) Argentina, Chile, Uruguay.
(3) Peru, Ecuador, Venezuela.
(4) Brazil.
(5) China.
(6) Turkey.
(7) Bangladesh.
(8) Pakistan.
(9) Pakistan (second institute).

Participants in the Study of the U.S. Institutes for Student Leaders will be highly motivated undergraduate students from colleges, universities and other institutions of higher education in selected countries overseas who demonstrate leadership through academic work, community involvement, and extracurricular activities. Their major fields of study will be varied, and will include the sciences, social sciences, humanities, education and business. All participants will have a good knowledge of English.

Every effort will be made to select a balanced mix of male and female participants, and to recruit participants who are from non-elite or underprivileged backgrounds, from both rural and urban areas, and have had little or no prior experience in the United States or elsewhere outside of their home country.

Program Dates: The Institutes should be five weeks in length. While the majority of Institutes should take place during Summer 2007, scheduling of each Institute should take into consideration the academic calendar of the participants' home country(ies). Those institutes beginning in Summer 2007 should begin on or around the same date.

Program Guidelines: It is essential that proposals provide a detailed and comprehensive narrative describing how the partner organizations and/or host institutions will achieve the objectives of the Institutes; the title, scope and content of each session; planned site visits, including educational travel; and how each session relates to the overall institute theme.

The proposal must list the institutions that will host the various programs, and for which group of students.

A sample template should be provided that lays out the academic program, including lectures, panel discussions, group presentations or other activities. A description of plans for public and media outreach in connection with the Institutes should also be included.

Overall, proposals will be reviewed on the basis of their responsiveness to RFGP criteria, coherence, clarity, and attention to detail.

Please note: In a cooperative agreement, the Bureau is substantially involved in program activities above and beyond routine grant monitoring. The Bureau will assume the following responsibilities for the Institutes: participate in the selection of participants; review and confirm syllabi and proposed speakers for each of the Institutes; oversee the Institutes through one or more site visits; debrief participants in Washington, DC at the conclusion of the Institute; work with the cooperating agency to publicize the program through various media outlets; provide Bureau-approved evaluation surveys for completion by participants; and engage in follow-on communication with the participants after they return to their home countries.

The Bureau may request that the grantee institution make modifications to the academic residency and/or educational travel components of the program. The recipient will be required to obtain approval of any significant program changes in advance of their implementation.

Note: All materials, publicity, and correspondence related to the program must acknowledge this as a program of the Bureau of Educational and Cultural Affairs, U.S. Department of State. The Bureau will retain copyright use of and distribute materials related to this program is it sees fit.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is detailed in the previous paragraph.

Fiscal Year Funds: FY–2007 (pending availability of funds).

Approximate Total Funding: $2,250,000.

Approximate Number of Awards: 1.

Approximate Average Award: $2,250,000.

Floor of Award Range: $2,000,000.

Ceiling of Award Range: $2,250,000.

Anticipated Award Date: Pending availability of funds, April 1, 2007.

Anticipated Project Completion Date: May 30, 2008.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two

additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau strongly encourages applicants to provide maximum levels of cost sharing and funding in support of its programs. When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs that are claimed as your contribution, as well as costs to be paid by the Federal Government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a) Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. ECA anticipates awarding one grant in an amount up to $2,250,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Branch for the Study of the United States, ECA/A/E/USS, Room 314, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel. (202) 453–8540; fax (202) 453–8533 to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/USS–07–SL located at the top of this announcement when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document, which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Jennifer Phillips and refer to the Funding Opportunity Number ECA/A/E/USS–07-SL located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f, ''Application Deadline and Methods of Submission'' below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget. Please refer to the Solicitation Package. It contains the mandatory PSI and POGI documents for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR part 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Grantee may be responsible for issuing DS–2019 forms to participants in this program, as an alternate responsible officer under the Bureau's J Designation.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 203–5029, FAX: (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural

life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section (V.2.) for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Monitoring: Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key monitoring questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes. You should also show how your project objectives link to the goals of the program described in this RFGP. Overall, the quality of your monitoring plan will be judged on how well it specifies successes and challenges.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Evaluation: The Bureau's Office of Policy and Evaluation will conduct evaluations of the Study of the U.S. Institutes through E–GOALS, its online system for surveying program participants and collecting data about program performance. These evaluations assist ECA and its program grantees in meeting the requirements of the Government Performance Results Act (GPRA) of 1993. This Act requires Federal agencies to measure the results of their programs in meeting pre-determined performance goals and objectives. All program participants will take three online surveys:

1. Standardized pre-program surveys, at the beginning of the program;
2. Standardized post-program surveys, at the end of the program and before their return home; and
3. Standardized follow-up surveys, approximately six months to a year after the conclusion of the program.

These surveys help ECA assess: Satisfaction with the program; student attitudes and views; the extent of learning and skill development (including leadership); reliance on new learning and skills in their studies, at work, and in their communities; and their efforts to share new ideas, knowledge, and insights with citizens in their home countries.

Since organizations play a critical role in facilitating E–GOALS evaluations of program participants, it is imperative that applicants include a plan to ensure that participants complete the post-program surveys while they are still on program and prior to their departure from the United States; this includes monitoring the response rate through collection of a certificate issued by the system to each student upon completion of the survey. The grantee will be working directly with an E-GOALS evaluator in the Office of Policy and Evaluation. Please see specific responsibilities in the accompanying Project Objectives, Goals and Implementation (POGI) document.

IV.3d.4. Describe your plans for overall program management, staffing, and coordination with the Bureau. The Bureau considers these to be essential elements of your program; please be sure to give sufficient attention to them in your proposal.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $2,250,000. While there is no rigid ratio of administrative to program costs, the Bureau urges applicant organizations to keep administrative costs as low and reasonable as possible.

There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants should also provide copies of any sub-grant agreements that would be implemented under terms of this award.

IV.3e.2. Allowable costs for the program and additional budget guidance are outlined in detail in the POGI document. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission.

Application Deadline Date: February 16, 2007.

Reference Number: ECA/A/E/USS–07–SL.

Methods of Submission: Applications may be submitted in one of two ways:

(1) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2) electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not

be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight (8) copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Reference Number: ECA/A/E/USS–07–SL, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to regional bureaus and Public Affairs Sections at U.S. embassies and for their review, as appropriate.

IV.3f.2. Submitting Electronic Applications. Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*). Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov. Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday—Friday, 7 a.m.—9 p.m. Eastern Time, E-mail: *support@grants.gov*.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

V.2. Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of Program Idea/Plan: Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity.

2. Ability to Achieve Overall Program Objectives: Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. Support for Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (program venue, study tour venue, and program evaluation) and program content (orientation and wrap-up sessions, site visits, program meetings and resource materials).

4. Evaluation and Follow-On: Proposals should include a plan to evaluate the Institute's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original institute objectives is strongly recommended. Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

5. Cost-effectiveness/Cost-sharing: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

6. Institutional Track Record/Ability: Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the Institute's goals.

VI. Award Administration Information

VI.1. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA

program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants; http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one (1) copy of the final program and financial report no more than 90 days after the expiration of the award.

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. Please refer to Application and Submission Instructions (IV.3d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Jennifer Phillips, Branch for the Study of the United States, ECA/A/E/USS, Room 314, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547; tel. (202) 453–8537; fax (202) 453–8533; e-mail, *PhillipsJA@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the title ''Study of the U.S. Institutes for Student Leaders'' and number ECA/A/E/USS–07–SL. Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice:

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: December 18, 2006.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–22320 Filed 12–27–06; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 5627]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) through the Subcommittee on Standards of Training, Certification and Watchkeeping will conduct an open meeting at 9:30 a.m. on January 10, 2007. The meeting will be held in Room 1420 of Jemal's Riverside Building, 1900 Half Street, SW., Washington, DC 20593. The purpose of the meeting is to prepare for the 38th session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW 38) to be held on January 22–26, 2007, at the Royal Horticultural Halls and Conference Centre in London, England.

The primary matters to be considered include:

—Comprehensive review of the STCW Convention and the STCW Code;
—Measures to enhance maritime security;
—Unlawful practices associated with certificates of competency;
—Large passenger ship safety;
—Review of the principles for establishing the safe manning levels of ships;
—Education and training requirements for fatigue prevention, mitigation, and management;
—Training requirements for the control and management of ship's ballast water and sediments; and
—Development of competences for ratings.

Please note that hard copies of documents associated with STW 38 will not be available at this meeting, the documents will be available at the meeting in portable document format (.pdf) on CD–ROM. To request documents before the meeting please write to the address provided below, and include your name, address, phone number, and electronic mail address. Copies of the papers will be sent via electronic mail to the address provided.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Luke Harden, U.S. Coast Guard (G–PSO–1), Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling; (202) 372–1408.

Dated: December 18, 2006.

Michael Tousley,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 06–9894 Filed 12–27–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 15, 2006

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures goving proceeding to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–26628.
Date Filed: December 15, 2006.
Parties Members of the International Air Transport Association.
Subject TC31 North & Central Pacific Areawide Resolutions (Memo 0389).
Intended effective date: 1 April 2007.

Docket Number: OST–2006–26630.
Date Filed: December 15, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC31 North & Central Japan-North America, Caribbean, Resolutions

and Specified Fares Tables (Memo 0390). Intended effective date: 1 April 2007.

Docket Number: OST–2006–26631.

Date Filed: December 15, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC31 North & Central, TC3-Central America, South America, Resolutions and Specified Fares Tables (Memo 0391). Intended effective date: 1 April 2007.

Docket Number: OST–2006–26632.

Date Filed: December 15, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC123 Areawide, Resolution 015v (Memo 0342). Intended effective date: 1 April 2007.

Docket Number: OST–2006–26633.

Date Filed: December 15, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC123 South Atlantic, Resolutions and Specified Fares Tables (Memo 0344), Technical Corrections: TC123 South Atlantic Resolutions, (Memo 0348). Intended effective date: 1 April 2007.

Docket Number: OST–2006–26634.

Date Filed: December 15, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC123 Mid Atlantic, Resolutions and Specified Fares Tables (Memo 0345). Intended effective date: 1 April 2007.

Docket Number: OST–2006–26635.

Date Filed: December 15, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC123 North Atlantic, (Except between USA and Korea (Rep. Of), Malaysia), Resolutions and Specified Fares Tables (Memo 0346). Intended effective date: 1 April 2007.

Docket Number: OST–2006–26636.

Date Filed: December 15, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC123 North Atlantic, (Between USA and Korea (Rep. Of), Malaysia), Resolutions and Specified Fares Tables (Memo 0347). Intended effective date: 1 April 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–22274 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Dormerly Subpart Q) During the Week Ending December 15, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–26610.

Date Filed: December 13, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 3, 2007.

Description: Application of Murray Air, Inc. requesting reissuance of its certificate of public convenience and necessity in the name of National Air Group, Inc.

Docket Number: OST–2006–26649 .

Date Filed: December 15, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 5, 2007.

Description: Application of All Nippon Airways Co., Ltd. (ANA), requesting an amendment to its foreign air carrier permit authorizing ANA to engage in (a) scheduled all-cargo service between any point or points in Japan, on the one hand, and Chicago, Los Angeles San Francisco and New York (via a technical stop at Anchorage), on the other hand, and (b) charter all-cargo service between any point or points in Japan and any point or points in the United States, and other all-cargo charters.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–22275 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Debt Service Reserve Pilot Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; Solicitation of Proposals to Participate in the Debt Service Reserve Pilot Program.

SUMMARY: This solicitation is for proposals from pubic transportation agencies currently receiving grant funds under the Urbanized Area Formula Program at 49 U.S.C. 5307 to establish a debt service reserve fund in connection with bonds to be issued in support of a public transportation project.

DATES: Complete proposals may be submitted to FTA at any time prior to June 1, 2009.

ADDRESSES: Proposals must be submitted electronically to *Paul.Marx@dot.gov* and *Katherine.Mattice@dot.gov.* The subject line of the e-mail should read: Proposal for Debt Service Reserve Pilot Program.

FOR FURTHER INFORMATION CONTACT: Contact Paul Marx, Office of Budget and Policy, (202) 366–1675, e-mail; *Paul.Marx@dot.gov.*

SUPPLEMENTARY INFORMATION:

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I. General Program Information
II. Guidelines for Preparing and Submitting Proposals
III. Proposal Review, Selection, and Notification

I. General Program Information

A. Authority

Section 3023(3) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy of Users (SAFETEA–LU) established the Debt Service Reserve Pilot Program under 49 U.S.C. 5323(d)(4). This section establishes a pilot program to reimburse not to exceed 10 eligible recipients for deposits of bond proceeds in a debt service reserve that the recipient establishes pursuant to section 5302(a)(1)(K) from amounts made available to the recipient under section 5307.

B. Background

Debt service reserves (generally one year's debt service requirement) are usually required when a project sponsor issues debt bonds) in support of its project. The debt service reserve may represent as much as 10 percent of the face value of the bonds and must be

held until the bonds mature or are substantially repaid. This represents an opportunity cost to the public transportation provider's capital budget. By allowing this expense to be reimbursed with grant funds, the pilot program hopes to make the public transportation agencies's capital programs more cost-effective, and possibly to reduce the agencies' total cost of borrowing.

C. Eligible Applicants

Public transportation providers, who currently receive grants under the Urbanized Area Formula Grants Program (section 5307), and issue or intend to issue bonds for eligible transit capital projects, and who wish to have the related debt service reserve reimbursed with funds available to them under section 5307, must submit a proposal. For the purposes of this pilot program there is not difference between bonds secured with purely local funds (such as a sales tax revenue bonds) or bonds secured with anticipated receipts of future grants fund (grant anticipation bonds). This pilot program is not intended to apply to public transportation agencies that issue bonds for which no debt service reserve is needed (as when certain bond insurance is present). These agencies may seek reimbursement of the financing costs associated with such bonds under existing authority. The pilot program is also not intended to apply to borrowing from a State Infrastructure Bank (SIB), even if such a bank required a debt service reserve. FTA reads the combination of conditions for eligibility—i.e., ''an eligible recipient of section 5307 funds'' and ''bond proceeds deposited in a debt service reserve''—as being prescriptive of the applicability of this pilot program.

D. Eligible Expenses

For the purposes of this pilot program, the blood proceeds deposited into the debt service reserve constitute the eligible costs to be reimbursed with section 5307 grant funds. Subsequent debt service payments and project costs will remain eligible for reimbursement, as authorized under section 5307. Thus, the sole effect of this authority is to accelerate the reimbursement for the debt service reserve.

E. Matching Requirements

The Federal share for capital expenses, including payment of the debt service reserve, may not exceed 80 percent. All local and state revenues generally are eligible for inclusion in the local match with the exception of farebox and farebox-related revenues.

F. Proposal Evaluation Criteria

Proposals from eligible Urbanized Area Formula grant recipients will be evaluated on the following basis.

- The proposal involves a bond issuance to occur within one Calendar Year.
- The proposal includes a clear financial goal to be achieved by the bond issuance.
- The bond issuance is likely to be rated (prior to any bond insurance) at least ''investment grade'' (i.e., BBB+, Baa or higher).
- Without limitation, the bond issuance may be for revenue bonds secured solely by farebox revenues, provided the sum of Federal project reimbursement does not exceed 80 percent of eligible project costs including the debt service reserve. (See matching requirements above).
- The proposal includes a description of the cash-flow or project acceleration benefit anticipated from use of the debt service reserve reimbursement.

To the extent possible from the proposals received, FTA will seek to provide for geographic and size of public transportation authority diversity in the approval of pilot program participants.

G. Program Requirements

Grants made for projects that include Federal reimbursement for financing costs are subject to Federal requirements that apply to all grants made under section 5307. This includes the requirement at section 5307 (g)(3) that states, with regard to debt financing, the ''amount of interest allowed * * * may not be more than the most favorable financing terms reasonable for the project at the time of borrowing.''

II. Guidelines for Preparing and Submitting Proposals

FTA is conducting a national solicitation for proposals from public transportation agencies wishing to participate in the Debt Service Reserve Pilot Program. FTA will grant authority for not more than 10 agencies to use apportioned Urbanized Area Formula Grant funds to reimburse the cost of depositing bond proceeds into a debt service reserve. Public transportation agencies will be selected to participate on a competitive basis. To the extent possible, FTA seeks proposals for bond issuance to occur in calendar year 2007. However, if fewer than ten proposals are received FTA will process proposals for bond issuances after 2007 on a first-come first-served basis.

Proposals should be submitted electronically to: *Paul.Marx@dot.gov.* and *Katherine.Mattice@dot.gov.*

Proposals must be received by FTA no later than June 1, 2009. The public transportation agency designated to receive apportionments under the Urbanized Area Formula Grants program (section 5307) will submit a proposal that includes:

1. Applicant Information

Basic identifying information, including:

a. Agency;

b. Contact information for notification of project selection: Contact name, address, fax and phone number.

2. Project Information

Every application must:

a. Identify the project in support of which bonds will be issued, the amount of the bonds, the term(s) of the bonds, the source of security for the bonds (e.g., pledged asset or revenue) and the projected interest rate(s);

b. Provide a sources and uses of funds statement/budget for the project, taking into account the bond issuance;

c. Document sources of funds likely to be used to match FTA funds;

d. Document the benefit to be derived from issuing the bonds, the benefit anticipated from reimbursement of the debt service reserve, and how the reimbursement, which constitutes program income, will be used.

e. Include a narrative portion (not more than 8 pages, double-spaced) that addresses: the historic role of debt in the public transportation agency's capital or operating plans, where the pilot program proposal fits within that context, and what proportion of the current capital plan the debt issuance and the debt service reserve represent.

III. Proposal Review, Selection, and Notification

FTA will evaluate proposals based on the degree to which a public transportation agency has planned and justified the issuance of bonds or other debt to advance a transit capital project funded with section 5307 funds.

FTA expects to announce public transportation agencies selected to participate in the pilot program in a **Federal Register** Notice in early 2007.

Issued on December 22, 2006.

James S. Simpson,

Administrator.

[FR Doc. 06–9912 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–04–19856]

Pipeline Safety: Lessons Learned From a Security Breach at a Liquefied Natural Gas Facility

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: This advisory reminds operators of the need for vigilance in providing security at liquefied natural gas (LNG) facilities. PHMSA's pipeline safety regulations require operators to implement security measures that deter intruders at LNG terminals, facilities, and peak-shaving plants. This Advisory Bulletin reinforces the importance of effectively implementing and thoroughly testing security procedures and systems.

ADDRESSES: This document can be viewed on the PHMSA home page at: *http://www.phmsa.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joy Kadnar at (202) 366–0568, or by e-mail at *Joy.Kadnar@dot.gov*; or Buddy Secor at (571) 227–1306, or by e-mail at *Buddy.Secor@dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

PHMSA's pipeline safety regulations require operators to implement security measures that deter intruders. These measures include written procedures, protective enclosures, security communication, lighting, and monitoring (49 CFR part 193, subpart J). Operators must use staff who have been trained to carry out security duties through means that include security training (49 CFR 193.2709 and 2715). Operators need to implement these measures in ways that ensure personnel and systems detect trespassers and respond correctly.

LNG Facility Security: Lessons Learned From the Security Breach in Lynn, MA

A recent breach in security at an LNG facility shows the need for preparedness and vigilance. The operator discovered a breach of security at its LNG facility during routine maintenance on a gate at the side of the storage tank. Although there was no damage to the tank, intruders had broken through the gate to gain access to the tank.

Investigation revealed that the intruders had cut through the outer and inner perimeter fences and through the locked gate and gained access to the storage tank several days before the breach was discovered. A microwave intrusion system documented the intrusions on the computer monitoring system, which should have alerted operator personnel to the intrusions. Operator personnel did not respond. In the days following, personnel conducted several routine visual inspections of the area without noting the cuts in the fences. Although there was also video surveillance of the perimeter, personnel did not review the tape until they investigated the breach.

State authorities responded quickly to examine security at other LNG facilities in the state. These authorities inspected operator practices and procedures to ensure personnel and systems respond correctly during a security breach.

II. Advisory Bulletin (ADB–06–04)

To: Owners and Operators of LNG Plants That Contain LNG.

Subject: Security at LNG facilities.

Advisory: The pipeline safety regulations require an operator of LNG facilities in a plant containing LNG to develop and follow written procedures for security at the LNG plant. Operators need to verify the reliability and feasibility of security procedures and systems. Operators also need to ensure personnel and systems respond correctly when security is compromised.

LNG Facility Security: Lessons Learned from the Security Breach in Lynn, MA

PHMSA recommends LNG facility operators establish and follow these suggested practices and procedures to ensure that their security measures function as intended by the regulations, and that security at their LNG plants is rigorous:

- Test systems thoroughly to verify that alarms work and that monitoring devices function as intended;
- Ensure remotely stationed personnel are properly trained on the security procedures of each facility that they monitor;
- Determine whether personnel monitoring security for an LNG plant can realistically respond to security breaches in a timely manner;
- Update security procedures as needed to provide effective security at the LNG plant and to incorporate the most relevant threat information;
- Confirm that remote monitoring station personnel properly coordinate activities with those parties responsible for LNG plant facility security; and,
- Independently audit LNG plant security or conduct unannounced tests of security systems, procedures, and personnel.

Authority: 49 U.S.C. chapter 601; 49 CFR 1.53.

Issued in Washington, DC, on December 22, 2006.

Theodore L. Willke,

Acting Associate Administrator for Pipeline Safety.

[FR Doc. E6–22323 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No.: PHMSA–97–2995]

Pipeline Safety: Random Drug Testing Rate

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of minimum annual percentage rate for random drug testing.

SUMMARY: PHMSA has determined that the minimum random drug testing rate for covered employees will remain at 25 percent during calendar year 2007.

DATE: Effective January 1, 2007, through December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Cindy Ingrao, Director, Drug and Alcohol Policy and Investigations, PHMSA, U.S. Department of Transportation, 400 Seventh Street, SW., Room 8406, Washington, DC 20590, telephone (202) 366–2350 or email *cindy.ingrao@dot.gov*.

SUPPLEMENTARY INFORMATION: Operators of gas, hazardous liquid, and carbon dioxide pipelines and operators of liquefied natural gas facilities must select and test a percentage of covered employees for random drug testing. Pursuant to 49 CFR part 199.105(c)(2), (3), and (4), the PHMSA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the pipeline industry. The data considered by the Administrator comes from operators' annual submissions of Management Information System (MIS) reports required by 49 CFR part 199.119(a). If the reported random drug test positive rate is less than 1.00 percent, the Administrator may continue the minimum random drug testing rate at 25 percent. In 2005, the random drug test positive rate was less than 1.00 percent. Therefore, the minimum random drug testing rate will remain at 25 percent for calendar year 2007.

In reference to the notice published in 70 FR 20800, PHMSA intends to publish an Advisory Bulletin specifying the methodology for reporting calendar year 2007 MIS contractor data to PHMSA. Therefore, operators must ensure records on contract employees continue to be maintained in calendar year 2007.

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60117, and 60118; 49 CFR 1.53.

Issued in Washington, DC on December 20, 2006.

Thomas Barrett,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. E6–22295 Filed 12–27–06; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34943]

Beaufort Railroad Company, Inc.—Modified Rail Certificate

On December 1, 2006, Beaufort Railroad Company, Inc. (BRC), a subsidiary of the South Carolina Division of Public Railways (SCDPR), filed a notice for a modified certificate of public convenience and necessity under 49 CFR part 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity,* to operate approximately 25.05 miles of rail line extending from milepost AMJ–443.26, in Yemassee, to milepost AMJ–468.31, in Port Royal, SC.

BRC states that the line was formerly owned by the Seaboard System Railroad, Inc., and was authorized for abandonment by the Interstate Commerce Commission in *Seaboard System Railroad, Inc.—Abandonment—in Beaufort County, SC,* Docket No. AB–55 (Sub-No. 110) (ICC served Aug. 23, 1984). Although authorized for abandonment, the line was subsequently acquired by the South Carolina State Ports Authority (SCSPA) and leased to the South Carolina Public Railways Commission (SCPRC), which is now under SCDPR.[1] Tangent Transportation Company, Inc., a wholly owned subsidiary of SCPRC, operated the line until 2003. Since then, SCSPA has maintained the right-of-way (ROW).

As operator of the line, BRC will provide freight services on an ''as required basis,'' pursuant to an operating agreement with SCSPA and SCDPR.[2] Under the agreement, BRC and SCSPA agree to a 1-year period for operation, commencing from October 12, 2006, and continuing from year to year thereafter, until terminated in accordance with the operating agreement and Board regulations. According to BRC, it does not expect to make any interchange or interline connections with any connecting railroads.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions,* Finance Docket No. 28990F (ICC served July 16, 1981).

BRC indicates that commencement of operations will be contingent upon shippers entering into binding written commitments for a sufficient volume of carloads per year (an amount judged adequate to cover all costs associated with maintenance, track materials, and operations of the line).

BRC states that SCSPA will maintain third party liability insurance coverage in an amount of not less than $5,000,000 to cover any and all claims arising solely from the existence of hazards presented by the rail line or the property upon which the rail line is located. BRC also states that, prior to commencement of railroad operations, it will acquire and maintain third party liability insurance coverage in an amount of not less than $5,000,000 to cover any and all claims arising solely from its acts, works, and operations with respect to the rail line and the property upon which the rail line is located.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, N.W., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, N.W., Suite 7020, Washington, DC 20001.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: December 20, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary .

[FR Doc. E6–22289 Filed 12–27–06; 8:45 am]

BILLING CODE 4915–01–P

[1] According to BRC, SCDPR is a division of the South Carolina Department of Commerce, and SCSPA is also an instrumentality of the State of South Carolina.

[2] According to BRC, both SCSPA and SCDPR intend to maintain the ROW, with SCDPR providing service through BRC.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34973]

Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway—Lease and Operation Exemption—BNSF Railway Company

Burlington Shortline Railroad, Inc., d/b/a Burlington Junction Railway (BJRY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease and operate, pursuant to an agreement with BNSF Railway Company (BNSF), approximately 1.2 miles of railroad properties consisting of certain trackage, real property, and railroad operating rights. The rail properties consist of five tracks, numbered 2001, 2002, 2003, 2012, and 2013, located at Ottumwa, IA. There are no mileposts.

Based on projected revenues for the line, BJRY expects to remain a Class III rail carrier. BJRY certifies that its projected annual operating revenues as a result of the transaction will not exceed $5 million. The transaction is expected to be consummated on January 14, 2007.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34973, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: (1) for BJRY, John D. Heffner, John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20036; and (2) for BNSF, Sarah Bailiff, 2650 Lou Menk Drive, Fort Worth, TX 76131.

Board decisions and notices are available on our Web site at *www.stb.dot.gov***.**

Decided: December 20, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–22137 Filed 12–27–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 21, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW Washington, DC 20220.

DATES: Written comments should be received on or before January 29, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1144.
Type of Review: Revision.
Title: Generation-Skipping Transfer Tax Return for Distributions.
Form: 706–GS(D).
Description: Form 706–GS(D) is used by distributees to compute and report the Federal GST tax imposed by IRC section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or Households.
Estimated Total Burden Hours: 980 hours.

OMB Number: 1545–1447.
Type of Review: Extension.
Title: CO–46–94 (Final) Losses on Small Business Stock.
Description: Records are required by the Service to verify that the taxpayer is entitled to a section 1244 loss. The records will be used to determine whether the stock qualifies as section 1244 stock.
Respondents: Businesses and other for-profit institutions.
Estimated Total Burden Hours: 2,000 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Alexander T. Hunt , Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Robert Dahl,
Treasury PRA Clearance Officer.

[FR Doc. E6–22296 Filed 12–27–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974, as Amended; System of Records

AGENCY: Treasury.

ACTION: Notice of alteration to a Privacy Act System of Records.

SUMMARY: The Treasury Department gives notice of proposed alterations to the system of records entitled, ''Treasury .007–Personnel Security System,'' which is subject to the Privacy Act of 1974.

DATES: Comments must be received by January 29, 2007. The proposed altered system of records will become effective February 6, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Comments should be sent to: Deputy Assistant Secretary for Security, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Andrea Gaddy-Smith, Office of Security, 202–622–2991.

SUPPLEMENTARY INFORMATION: Homeland Security Presidential Directive 12 (HSPD–12) requires improved processes and technology for Personal Identity Verification (PIV) of all Federal employees and contractors who require long-term (6 month and over) access to federally controlled facilities and/or information systems. The requirements of HSPD–12 do not apply to short-term guests and occasional visitors to the Department, its bureaus, or any of its facilities.

The purpose for improving the process for identity verification is to have a stronger Federal-wide standard for ''identity proofing'' and meet the objective of HSPD–12 that requires Federal agencies to have a ''secure and reliable form of identification'' for federal employees or applicants and a contractor's employees who are applying for a Personal Identity Verification (PIV) Card. At the time of ''identity proofing'' and registration an applicant for a Treasury job, a Treasury employee or contractor's employee will need to produce two documents verifying the individual's identity, one of which must be a government-issued photo ID and one other identity-source document listed on Form I–9, such as a valid state driver's license, to receive a PIV Card.

The alteration to the notice adds language under the following headings: ''Categories of individuals covered by the system,'' ''Categories of records in the system,'' and ''Authority for maintenance of the system.''

The notice for the system of records was last published in its entirety on August 1, 2005, at 70 FR 44187.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

The proposed alterations to ''Treasury .007— Personnel Security System'' are set forth below.

Treasury .007

SYSTEM NAME:

Personnel Security System—Treasury.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

Description of the change: Replace the period ''(.)'' at the end of category (3) with a comma ''(,)'' and add the following: '', and (4) applicants, employees and contractor employees who have applied for the ''Personal Identity Verification (PIV) Card.''

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

Description of the change: Replace the period ''(.)'' at the end of category (6) with a comma ''(,)'' and add the following: '', and (7) records pertaining to the personal identification verification process mandated by HSPD–12 and the issuance, denial or revocation of a PIV card.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Description of change: Remove current entry and in its place add the following: ''Executive Order 10450, Sections 2 and 3, Executive Order 12958, Executive Order 12968, and Homeland Security Presidential Directive 12.''

* * * * *

Dated: December 20, 2006.

Wesley T. Foster,
Acting Assistant Secretary for Management.

[FR Doc. E6–22297 Filed 12–27–06; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form SS–8

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 SS–8, Determination of Worker Status for Purpose of Federal Employment Taxes and Income Tax Withholding.

DATES: Written comments should be received on or before February 26, 2007 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 Carolyn N. Brown at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6688, or through the Internet at *Carolyn.N.Brown@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

OMB Number: 1545–0004.

Form Number: SS–8.

Abstract: Form SS–8 is used by employers and workers to furnish information to IRS in order to obtain a determination as to whether a worker is an employee for purposes of Federal employment taxes and income tax withholding. IRS uses the information on Form SS–8 to make the determination.

Current Actions: There were 7 lines items deleted to the Form SS–8 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, Federal government, farms, and state, local or tribal governments.

Estimated Number of Respondents: 4,554.

Estimated Time Per Respondent: 22 hours, 17 minutes.

Estimated Total Annual Burden Hours: 101,464.

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: December 19, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–22254 Filed 12–27–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1139

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 1139, Corporation Application for Tentative Refund.

DATES: Written comments should be received on or before February 26, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Corporation Application for Tentative Refund.

OMB Number: 1545–0582.

Form Number: 1139.

Abstract: Form 1139 is filed by corporations that expect to have a net operating loss, net capital loss, or unused general business credits, carried back to a prior tax year. IRS uses Form 1139 to determine if the amount of the loss or unused credits is proper.

Current Actions: We are adding 1 line item and 8 Code references.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 44 hr., 15 min.

Estimated Total Annual Burden Hours: 132,750.

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: December 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–22255 Filed 12–27–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209682–94]

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 final regulation, REG–209682–94 (TD 8847), Adjustments Following Sales of Partnership Interests, (§§ 1.732–1 and 1.743–1).

DATES: Written comments should be received on or before February 26, 2007 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 regulations should be directed to Allan Hopkins, at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Adjustments Following Sales of Partnership Interests.

OMB Number: 1545–1588.

Regulation Project Number: REG–209682–94.

Abstract: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. This regulation relates to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 226,000.

Estimated Time Per Respondent/Recordkeeper: 4 hrs.

Estimated Total Annual Burden Hours: 904,000.

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: December 21, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–22256 Filed 12–27–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on CARES Business Plan Studies

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 January 22, 2007, from 6 p.m. until 9 p.m. at the VA Medical Center Saint Albans Campus, in the Pratt Auditoriumm 179–00 Linden Boulevard, St. Albans, NY.

The purpose of the meeting is to present and receive public comment on the proposed capital plan for new facilities at St. Albans and the process for receiving community input on developing reuse proposals for portions of the campus that will be vacated.

Interested persons may attend and present oral or written statements to the Committee. For additional information regarding the meeting, please contact Mr. Jay Halpern, Designated Federal Officer, (CARES), 810 Vermont Ave., NW., Washington, DC 20420 by phone (202) 273–5994, or by e-mail at *jay.halpern@va.gov.*

Dated: December 19, 2006.

By Directiion of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–9883 Filed 12–27–06; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 71, No. 249

Thursday, December 28, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 Part 622

[Docket No. 060731206–6280–02; I.D. 072806A]

RIN 0648–AS67

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 26

Correction

In rule document 06–9342 beginning on page 67447 in the issue of Wednesday, November 22, 2006, make the following correction:

§622.2 [Corrected]

On page 67458, in the first column, in §622.2, in amendatory instruction 6.D., in the second line, ''(p)(i)'' should read ''(p)(1)''

[FR Doc. C6–9342 Filed 12–27–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
December 28, 2006

Part II

Department of Homeland Security

6 CFR Part 27

Chemical Facility Anti-Terrorism Standards; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 27

[DHS–2006–0073]

RIN 1601–AA41

Chemical Facility Anti-Terrorism Standards

AGENCY: Department of Homeland Security.

ACTION: Advance Notice of Rulemaking.

SUMMARY: Section 550 of the Homeland Security Appropriations Act of 2007 (''Section 550'') provided the Department of Homeland Security with authority to promulgate ''interim final regulations'' for the security of certain chemical facilities in the United States. This notice seeks comment both on proposed text for such interim final regulations and on several practical and policy issues integral to the development of a chemical facility security program.

DATES: Written comments must be submitted on or before February 7, 2007.

ADDRESSES: Comments, identified by docket number or RIN number, may be submitted by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Comments by mail are to be addressed to IP/CNPPD/Dennis Deziel, Mail Stop 8610, Department of Homeland Security, Washington DC 20528–8610.

Instructions: All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments will be posted without change to *http://www.regulations.gov,* including any personal information sent with each comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation in Rulemaking Process'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or submitted comments, go to *http://www.regulations.gov.* Submitted comments by mail may also be inspected. To inspect comments, please call Dennis Deziel, 703–235–5263, to arrange for an appointment.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Dennis Deziel, Chief Program Analyst, Chemical Security Regulatory Task Force, Department of Homeland Security, 703–235–5263.

SUPPLEMENTARY INFORMATION:

Introduction

Since 2003, the Department of Homeland Security (DHS) has been working with its private sector partners in the chemical industry, state and local governmental entities and other interested parties on chemical facility security issues. Although many companies in the chemical industry have initiated voluntary security programs and have made significant capital investments in responsible security measures, the Secretary of Homeland Security has concluded that voluntary efforts alone will not provide sufficient security for the nation.

Beginning in 2005, through 2006, and most explicitly on September 8, 2006, the Secretary requested that Congress provide the Department of Homeland Security with regulatory authority to establish and require implementation of risk-based performance standards for the security of our nation's high-risk chemical facilities. Congress took action on those requests, and on October 4, 2006, the President signed the Department of Homeland Security Appropriations Act of 2007 (the Act), which provides the Department of Homeland Security with the authority to regulate the security of high-risk chemical facilities. *See* Pub. L. 109–295, sec. 550. The Department now intends to implement an appropriate regulatory program under Section 550 of that Act as quickly and responsibly as possible, focusing its resources first on those facilities in our nation that present the highest levels of security risk.

This notice discusses a range of regulatory and implementation issues. The program proposed by this notice would be implemented in phases, and DHS would address chemical facilities with the most significant risk profiles as early in the program as possible. For each phase, the program would contain several basic steps:

- Chemical facilities fitting certain risk profiles would complete a ''Top-screen'' risk assessment methodology accessible through a secure Department website. The Department would use this methodology to determine if a chemical facility ''present[s] a high level of security risk'' and should be covered by this program.
- If the Department determines that a chemical facility qualifies as ''high risk,'' the Department would require the facility to prepare and submit a Vulnerability Assessment and Site Security Plan, and would provide technical assistance to the facility as appropriate.
- Following a facility's submission of these materials, the Department would review the submissions for compliance with risk-based performance standards. The Department (or when appropriate, a DHS-certified third-party auditor) would follow up with a site inspection and audit.
- If the facility's Vulnerability Assessment or Site Security Plan is found deficient or if other problems arise, the facility could seek further technical assistance from the Department, and could consult, object, or appeal depending on the stage of the process. If the Vulnerability Assessment and/or Site Security Plan are ultimately disapproved, the covered facility would be required to revise its plan and resubmit the materials to meet the Department's performance standards, or face the penalties and other remedies set forth in the statute.
- If the covered facility's submissions are approved, the security plan is fully implemented and the facility is otherwise in compliance, the Department would issue a Letter of Approval to document the determination. The Department would also then notify the facility of its continuing obligations—based on its level of risk—to maintain and periodically update its Vulnerability Assessment and Site Security Plan.

This advance notice describes the details of these steps along with a number of policy and implementation issues. We seek comment on all aspects of this new regulatory program, including the many policy and practical questions integral to the successful implementation of the program.

Solicitation of Comment

Section 550 requires the Secretary of Homeland Security to promulgate ''interim final regulations establishing risk-based performance standards for security of chemical facilities * * *.'' He must do so ''[n]o later than six months'' from the date of enactment of this new authority, *i.e.* by April 4, 2007. The Executive Branch has implemented rules under other, similar regulatory

authorities over the course of years rather than months. See, *e.g.*, 42 U.S.C. 7412(r)(3) (requiring the promulgation of an initial list of chemicals within two years); 42 U.S.C. 7412(r)(7)(B)(i) (requiring promulgation of regulation within three years). By directing the Secretary to issue ''interim final regulations,'' Congress authorized the Secretary to proceed without the traditional notice-and-comment required by the Administrative Procedure Act. *See, e.g.*, Jeffrey S. Lubbers, A Guide to Federal Agency Rulemaking 114 (4th ed. 2006) (citing Omnibus Budget Reconciliation Act of 1987, and stating that notice and comment is not required where statute specifically permits a regulation to be issued in the interim final form); *see also* 65 FR 34,983 (Jun. 1, 2000) (interim final rule for Medicare program issued under that authority). Although ''interim final regulations'' may be (and often are) issued without prior notice and comment (and the Act requires no prior notice or comment period), the Department believes it would nevertheless be prudent to seek comment on many of the significant issues that will be addressed by such regulations while maintaining the aggressive timeline for implementation. An advance notice of proposed rulemaking is the typical route to seek comment in advance of an NPRM. Here, because Section 550 requires the Secretary to issue an interim final rule rather than an NPRM followed by a final rule, our advance notice seeks comment on text for an upcoming interim final rule. In this respect, this notice serves the purposes usually achieved by both an ANPRM and an NPRM. In addition, it is our intention to seek further comment with the interim final on additional implementation issues, and on any agency guidance that may follow.

The Department seeks public comment from all interested parties by February 7, 2007, on the questions, issues and proposed regulatory language identified in this notice. Given the 6-month deadline under Section 550 to promulgate an interim final rule, it will be necessary to complete that rule and reach conclusions on many of the issues raised herein early in 2007. Thus, this February 7, 2007, deadline cannot reasonably be postponed.

This notice is organized as follows: Section I provides a brief summary of relevant pre-existing Federal initiatives and regulatory authorities; Section II discusses the structure and requirements of the statute; Section III describes a proposed ''phased'' implementation with an immediate priority on the highest risk chemical facilities; and Section IV addresses a range of other legal and programmatic issues.

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I. Brief History of Federal Pre-Existing Chemical Security and Safety Programs

Prior to the enactment of Section 550, the Federal government did not have authority to regulate the security of most chemical facilities. Over the past three years, the Department has urged voluntary enhancement of security at these facilities and provided both technical assistance and grant funding for security. In addition, through the Coast Guard's Maritime Security regulations, the Department has addressed security at certain maritime-related chemical facilities. Recently, the Departments of Homeland Security and Transportation have cooperated in addressing the security of rail transportation of hazardous chemicals.

Other Federal programs have addressed chemical facility safety, but not security: the Environmental Protection Agency (''EPA''), for instance, regulates chemical process safety through its Risk Management Plan (RMP) program; the Occupational Safety and Health Administration (''OSHA'') regulates workplace safety and health at chemical facilities; and the Department of Commerce oversees compliance with the Chemical Weapons Convention. Finally, the Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives (''ATF'') regulates, through licenses and permits, the purchase, possession, storage, and transportation of explosives. Because Section 550 will build on pre-existing Federal security initiatives and chemical safety programs, a brief summary of these pre-existing initiatives and programs is appropriate here.

A. DHS Risk Assessment Methodology (RAMCAP), Chemical Buffer Zone Protection Program, and Site Assistance Visits

1. Risk Assessment Methodology (RAMCAP)

For the past two years, the Department has worked with the American Society of Mechanical Engineers, with input from many other parties, to develop a risk assessment methodology for many elements of our nation's critical infrastructure. The methodology is composed of two separate parts and can be utilized to perform both a preliminary ''consequence'' analysis and a more thorough vulnerability assessment on chemical facilities.

The first segment of the RAMCAP methodology is a screening tool known as the Top-screen, and is designed to be used through a secure Department Web site. For chemical facilities, the Top-

screen solicits answers to a series of questions intended to assess the level of damage that could result from a terrorist incident at the facility. The Top-screen process draws in part on preexisting data from the EPA's Risk Management chemical safety program (''RMP,'' discussed below). For example: Does the facility operate any RMP Program 2 or 3 processes? If so, how many persons could be exposed by a toxic release worst case scenario? How many persons could be exposed by a flammable release worst case scenario? The Top-screen also includes queries regarding manufacture and storage of explosives materials, and seeks information on quantities of chemical substances and precursors addressed by the Chemical Weapons Convention. *See* 22 U.S.C. 6701. The Top-screen process is intended to gather information both to evaluate the consequences of a catastrophic explosion or release and to assess the possible danger if dangerous chemicals are stolen. A more detailed description of the Top-screen process is available as Appendix A.

The second segment of RAMCAP provides the tools to conduct a thorough facility Vulnerability Assessment and could also be utilized via a secure website. It has three fundamental steps, each with detailed instructions:

1. Identify the assets on the facility;
2. Apply specified threat scenarios to each asset to quantify the resulting consequences if an attack succeeded; and
3. Apply the threat scenarios to each asset in light of the security measures in place and evaluate the likelihood and the degree to which the attack could succeed.

A detailed description of this process is set forth in Appendix B. Note that many responsible facilities have already conducted analyses of this type. Such analyses may be acceptable during the initial stages of the Section 550 program.

2. Chemical Buffer Zone Protection Program

The Chemical Buffer Zone Protection Program (Chem-BZPP) is designed to identify and implement voluntary protective measures for the area outside of a chemical facility's fence, or the ''buffer zone,'' to make it more difficult for a potential attacker to plan or launch an attack. These plans are intended to develop effective preventive and protective measures within the immediate vicinity of high-priority chemical sector critical infrastructure targets. The plans also increase the security-related capabilities of the jurisdictions responsible for the security and safety of the surrounding communities. DHS provides funds to localities to support the implementation of regional buffer zone plans and mitigate the identified vulnerabilities. In fiscal year (FY) 2006, the Department awarded $25,000,000 under this program.

Part of this effort is the BZPP Webcam Pilot Program, a web-based program using cameras installed at a few high-consequence chemical facilities. These webcams enable local law enforcement and DHS to conduct remote surveillance of the buffer zone surrounding each facility during times of elevated threat to help identify any terrorist surveillance and planning activities and link incidents across facilities.

3. Site Assistance Visits

Upon request, DHS conducts ''inside-the-fence'' site assistance visits to critical chemical facilities for a variety of reasons—a facility presents a high level of risk, the owner requests it, or the facility or sector is under threat. The site visits are conducted by DHS protective security professionals, subject-matter experts, and local law enforcement, along with the facility's owners and operators. These visits facilitate security vulnerability identification and mitigation discussions between government and industry. The visits also provide facilities and localities with valuable information on how to better protect the facility from a terrorist attack. After a visit, DHS suggests protective measures and issues a report to the facility to bolster its protective measures.

B. U.S. Coast Guard Maritime Security Regulations

The Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295, Nov. 25, 2002) enacted chapter 701 of Title 46, U.S. Code and required the Secretary of Homeland Security to issue regulations to strengthen the security of American ports and waterways and the ships that use them. This authority, in addition to other grants of authority, served as the basis for a comprehensive maritime security regime. Through these rules, the Coast Guard issued regulations to ensure the security of vessels, facilities, and other elements of the maritime transportation system. Part 105 of title 33 of the Code of Federal Regulations imposed requirements on a range of maritime facilities, including hazardous material and petroleum facilities and those fleeting facilities that receive barges carrying, in bulk, cargoes regulated by Subchapters D and O of Chapter I, Title 46, Code of Federal Regulations or Certain Dangerous Cargoes.

Under the Coast Guard's maritime security regulations, these facilities are required to perform security assessments, and then, based on these assessments, develop security plans, and implement security measures and procedures in order to reduce the risk of and to mitigate the results of any security incident that threatens the facility, its personnel, the public, the environment, and the economy.

C. Rail Security

The Departments of Transportation (DOT) and Homeland Security both have authority to regulate rail transportation. The Federal hazardous materials transportation law authorizes the Secretary of Transportation to establish regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. *See* 49 U.S.C. 5101 et seq., as amended by section 1711 of the Homeland Security Act of 2002 (Pub. L. 107–296, Nov. 25, 2002) and Title VII of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005). DHS, through TSA, has authority to ''oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities.'' 49 U.S.C. 114(f)(11).

Pursuant to DOT's authority, the Pipelines and Hazardous Materials Safety Administration (PHMSA) has issued, and the Federal Railroad Administration (FRA) enforces, various regulations that impact rail security. HM–232 requires covered persons—those who offer certain hazardous materials for transportation in commerce and those who transport certain hazardous materials in commerce—to develop and implement security plans. At a minimum, these security plans for transportation must address personnel security, unauthorized access for the transportation-related areas of facilities, and en route security for shipments of the covered hazardous materials. *See* 49 CFR 172.800, 172.802, and 172.804. In addition, PHMSA has issued regulations to reduce the risks to safety and security of leaving loaded rail cars unattended for periods of time. Pursuant to 49 CFR 174.14 and 174.16, a carrier must forward each shipment of hazardous materials ''promptly and within 48 hours (Saturdays, Sundays, and holidays excluded)'' after the carrier accepts the shipment at the originating point or the carrier receives the

shipment at any yard, transfer station, or interchange point.

Together with the Department of Transportation, DHS has recently taken many steps regarding security in the transportation of hazardous materials by rail. On June 23, 2006, DOT and DHS jointly issued a set of twenty-four ''security action items'' for the freight rail carriers of materials that are ''toxic by inhalation'' (TIH) (these materials are also referred to as ''poisonous by inhalation'' (PIH)). DOT and DHS, in consultation with the industry, developed these action items by observing and assessing the security-related practices that rail carriers use. The action items addressed three phases of security: (1) System Security, (2) En-route Security, and (3) Access Control.

In August 2006, the Federal government and the industry agreed upon ''supplemental'' security action items including measures to address four critical areas: (1) The establishment of secure storage areas for rail cars carrying TIH materials, (2) the expedited movement of trains transporting rail cars carrying TIH, (3) the positive and secure handoff of TIH rail cars at point of interchange and at points of origin and delivery, and (4) the minimization of unattended loaded tank cars carrying TIH materials. The rail carriers will submit these plans to TSA for review, and TSA will subsequently monitor and evaluate the success of the plans in reducing the standstill (dwell) time of TIH shipments in high threat urban areas.

On December 21, 2006, DOT and TSA issued notices of proposed rulemaking that would impose additional obligations, including new requirements regarding transportation of PIH materials. See DOT's notice of proposed rulemaking titled ''Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments'' at 71 FR 76834 and TSA's notice of proposed rulemaking titled ''Rail Transportation Security'' at 71 FR 76851. The proposed regulations would cover railroad carriers that transport certain hazardous materials, including bulk shipments of PIH materials. Among other measures, the proposed DOT rule would require railroad carriers to analyze the safety and security risks of the routes used. It would also require clarifications of the current security plan requirements to address en route storage, delays in transit, and delivery notification. In addition, it would require rail carriers to conduct pre-trip visual inspections at the ground level of rail cars containing PIH materials to detect improvised explosive devices (IEDs) or other evidence of tampering.

The proposed TSA rule would require those rail hazardous materials shippers and receivers, along with freight and passenger railroad carriers and rail transit systems, to (1) Designate a rail security coordinator to serve as the primary contact for the receipt of intelligence information and for other security-related activities; (2) allow TSA and other authorized DHS officials to enter and inspect property, facilities, equipment, and operations; and (3) report incidents, potential threats, and significant security concerns to DHS. In addition, TSA proposes to impose two additional requirements on PIH rail hazardous materials shippers and receivers, as well as freight railroad carriers that transport PIH: to (1) Provide to TSA, upon request the location and shipping information of rail cars within their physical custody or control that contain PIH materials, and (2) provide for a secure chain of custody and control of rail cars that contain PIH materials.

D. Environmental Protection Agency Risk Management Program

Pursuant to the Clean Air Act (CAA), EPA's Risk Management Program requires chemical facilities with listed chemicals in amounts exceeding prescribed threshold limits to implement an accident prevention program, an emergency response program, prepare a five-year accident history, and submit to EPA a risk management plan (RMP). *See* 42 U.S.C. 7412(r). These requirements are intended to prevent accidental releases and minimize the consequences of such releases by focusing on chemicals that in the event of an accidental release, could reasonably be expected to cause death, injury, or serious adverse effects to human health and the environment. On January 31, 1994, EPA promulgated a list of regulated substances and thresholds that identify stationary sources subject to the accidental release prevention regulations. 59 FR 4,478. Two years later, EPA issued a rule requiring the owners of these sources to develop accidental release programs and summaries of these plans. 61 FR 31,668 (Jun. 20, 1996).

An RMP contains information on the regulated substances handled at the facility, an analysis of the potential consequences of hypothetical accidental chemical releases (i.e., ''worst-case'' and ''alternative release'' scenarios), a five-year accident history, and information about the chemical accident prevention and emergency response programs at the facility. In 1999, more than 15,000 U.S. facilities submitted RMP information to EPA. Regulated facilities are required to update their RMPs at least every five years, and more frequently if specified changes occur.

As the RMP chemical list and threshold limits were established by EPA based on a chemical's potential for acute offsite health impacts in the event of a large air release, the Department believes that a number of the facilities regulated under this program may also qualify as ''high-risk'' facilities covered under Section 550. Although the RMP data are extremely useful, the Department is mindful of the fact that they contain information related only to a specified list of industrial chemicals that present air release hazards. The RMP data do not provide information relating to other potentially ''high-risk'' facilities, such as certain facilities covered by the Chemical Weapons Convention or certain other facilities that might be targeted for chemical theft or diversion.

E. Occupational Safety and Health Administration

The Occupational Safety and Health Administration (OSHA), an agency within the U.S. Department of Labor, regulates conditions and hazards affecting the health and safety of employees in the workplace. OSHA's mission is to prevent work-related injuries, illnesses, and deaths. OSHA regulates employers through specific enumerated safety standards (*see, e.g.*, 29 CFR part 1910) and through a ''general duty clause'' (*see* 29 U.S.C. 654(a)(1)), which requires a safe workplace even in the absence of specific standards. OSHA enforces these standards by inspecting workplaces and by issuing citations for violations.

OSHA has developed and enforces several standards that ensure chemical safety in the workplace. The Process Safety Management of Highly Hazardous Chemicals standard contains requirements for the management of hazards associated with processes using highly hazardous chemicals. *See* 29 CFR 1910.119. The Hazardous Waste Operations and Emergency Response Standard (HAZWOPER) covers emergency response operations for the release of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard. *See* 29 CFR 1910.120 and 1926.65.

In addition, OSHA has several other regulations that protect employees who are exposed to chemicals in the course of their work. In Subpart Z to 29 CFR 1910, OSHA establishes permissible exposure limits (PELs) for toxic and hazardous substances. Employers must measure employee exposure to these

substances and must take measures to limit employee exposures when the exposures reach impermissible limits. In Subpart I to 29 CFR 1910, OSHA establishes requirements for personal protective equipment (PPE). Employers must conduct hazard assessments. Where employees are exposed to impermissible exposures (which may, in some cases, be chemical exposures), employers must provide employees with proper PPE to assist in controlling the hazard.

Another standard related to chemical safety is OSHA's Hazard Communication Standard (HCS). The HCS was promulgated to provide workers with the right to know the hazards and identities of the chemicals they are exposed to while working, as well as the measures they can take to protect themselves. The HCS requires chemical manufacturers and importers to evaluate the hazards of the chemicals they produce and import. It also requires chemical manufacturers and importers to prepare labels and material safety data sheets (MSDSs) to convey the hazard information to their downstream customers. All employers with hazardous chemicals in their workplaces must have labels and MSDSs for their exposed workers and must train exposed workers to handle the chemicals appropriately. *See* 29 CFR 1910.1200.

F. Chemical Weapons Convention

The United States is a party to the Chemical Weapons Convention (CWC), which prohibits the development, production, stockpiling, and use of chemical weapons. The Convention entered into force on April 29, 1997, and was implemented in the United States by statute at 22 U.S.C. 6701 *et. seq.*, with regulations at 15 CFR 710 *et. seq.* The CWC does not prohibit production, processing, consumption, or trade of related chemicals for peaceful purposes, but it does establish a verification regime to ensure such activities are consistent with the object and purpose of the treaty. The CWC requires reporting and on-site inspections that are triggered when quantitative threshold activity levels are exceeded. The CWC monitors chemicals in three lists, or schedules, and certain ''unscheduled discrete organic chemicals.''

Schedule 1 includes toxic chemicals with few or no legitimate uses that are developed or used primarily for military purposes. Examples of schedule 1 chemicals include nerve agents, such as Sarin, and blister agents, such as Mustard and Lewisite. Schedule 2 includes chemicals that can be used for chemical weapons production, but that also have certain legitimate uses. Schedule 2 chemicals are not produced in large commercial quantities, and these include certain chemicals used to manufacture fertilizers and pesticides. Schedule 3 chemicals are those that can be used for chemical weapons production, but also have significant legitimate uses. Schedule 3 chemicals are produced in large commercial quantities and include chemicals used to manufacture paint thinners, cleaners, and lubricants.

As noted, the CWC imposes declaration and on-site inspections requirements upon industry when production, processing, or consumption exceeds certain thresholds. Inspections under the CWC are conducted to assess the risk and guide future routine inspections. In addition, inspections are conducted to verify the consistency with the declarations of the levels of production, processing, or consumption. These inspections also seek to confirm the absence of undeclared Schedule 1 chemicals.

G. The Explosives Authority of the Bureau of Alcohol, Tobacco, Firearms, and Explosives

ATF is an enforcement and regulatory organization responsible for, among other things, the investigation and prevention of Federal offenses involving the unlawful use, manufacture, and possession of explosives. ATF regulates, through licenses and permits, the purchase, possession, storage, and transportation of explosives. *See generally* 27 CFR Part 555. Specifically, ATF explosives regulations govern commerce; licensing of manufacturers, importers, and dealers; issuance of permits; business by licensees and operations by permittees; storage; and the records and reports required of licensees and permittees. 27 CFR 555.1. Each year, ATF issues the List of Explosives subject to these explosives requirements. *See, e.g.*, 70 FR 73,483 (Dec. 12, 2005).

Facilities that possess or store explosives (including manufacturing facilities) must also be properly licensed by ATF. *See* 27 CFR 555.41 *et seq.* For facilities that possess or store listed explosives, ATF requires certain safety precautions, including specific requirements governing the actual storage of the materials. *See* 27 CFR 555.201 *et seq.* ATF also prohibits shipment, transport, or possession of any explosive material by ''prohibited persons,'' including a person under indictment or convicted of a crime punishable by imprisonment for a term exceeding one year; a fugitive from justice; an unlawful user of controlled substance; or ''has been adjudicated a mental defective.'' *Id.* at 555.26(c), 555.49. ATF may conduct an investigation to confirm that an applicant is entitled to a license. *Id.* ATF will also conduct a background check on all persons and employees who are authorized to possess explosive materials as part of their employment. *See* 27 CFR 555.33.

II. Structure and Requirements of Section 550

With the authority under Section 550, the Department can now fill a significant security gap in the country's anti-terrorism efforts. Section 550 of the Act is a compact two-page set of mandates establishing the parameters of the Federal government's first regulatory program to secure chemical facilities against possible terrorist attack. Each subsection and sentence of this provision has significant consequences for the structure and content of the regulatory program.

*A. The Mandate to Promulgate Interim Final Regulations ''No later than six months after the date of enactment * * *''*

As discussed above, applicable statutes do not require the Department to seek comment prior to issuing these regulations, but we believe public comment will be very helpful in formulating the interim final rule and structuring the program. *Cf.* Administrative Conference of the United States Recommendation 76–5 (when it is necessary to make a rule effective immediately, agencies should give the public the opportunity to submit post-promulgation comments) (cited in Michael Asimow, *Nonlegislative Rulemaking and Regulatory Reform*, 1985 Duke L.J. 381, 426). An interim final rule has the same legal effect as a final rule. *See, e.g.*, *Career College Ass'n* v. *Riley*, 74 F.3d 1265, 1268 (D.C. Cir. 1996) (stating that interim final rule is final for purposes of statute requiring adoption of final rule by statutory date). In this regard, this notice discusses a number of issues related to promulgating chemical facility security regulations and invites comments on these issues. This notice includes proposed regulatory text which represents the Department's initial preference unless otherwise identified, but the Department also seeks comment on proposals and ideas discussed in the preamble but not contained in the regulatory text because the Department is interested in comments on alternative approaches.

The Department is currently considering a number of procedural questions that relate to the authority it has been granted. An initial question is whether the Department is required to finalize the interim regulations in light of the express language of 550(b), which provides that these interim regulations will apply until ''interim or final regulations promulgated *under other laws*'' are in effect. Pub. L. 109–295, Oct. 4, 2006 (emphasis supplied). We believe that the answer to that question is no; Congress gave the Department the authority to issue regulations in the interim final rule only; it did not contemplate that such regulations be ''finalized'' under this authority. It is important to note that these ''interim'' regulations will nevertheless have the full effect of law as if they were final. *See e.g.*, *Career College Ass'n* v. *Riley*, 74 F.3d 1265, 1268 (D.C. Cir. 1996).

A second issue is whether the Department can revise the interim final regulations issued under Section 550. Commentators have argued that the regulations cannot be revised since 550(a) and (b) indicate that the regulations must be issued ''no later than six months after the date of enactment'' and ''shall apply until'' the end date contemplated by Section 550(b). We believe the better view is that the regulations can be revised after the six month timeframe.

A third issue is what type of future legislation is necessary to replace the interim final rule under Section 550(b). Certainly, Section 550 could be superseded or extended in either an appropriations bill or in authorization legislation. If a future appropriations bill continued funding for the Section 550 program beyond that period, the Department could consider that future funding for the program as an extension of the ''authority provided by this section.''

B. Authority To Regulate ''Chemical Facilities'' that Present a ''High Level of Security Risk''

A fundamental question posed by Section 550 is which facilities it covers. Section 550 specifies that the provision ''shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk.'' The terms ''chemical facilities'' and ''high levels of security risk'' are not specifically defined in Section 550. Both terms have, however, been used in two prior legislative proposals with more explicit indications of their meaning. *See* H.R. 5695, 109th Cong. (2006), S. 2145, 109th Cong. (2006). Although the Department is not bound to interpret these terms in concert with language of prior unenacted legislative proposals, those prior proposals can provide helpful context on this specific definitional issue.

In H.R. 5695, the term ''chemical facility'' refers to any facility that the Secretary has determined to possess more than a threshold amount of a potentially dangerous chemical. *See* H.R. 5695, 109th Cong. sec. 2 (2006) (adding section 1802(b)(2) and subsequent sections in the Homeland Security Act). (S. 2145 uses different terms to a similar effect.). In neither instance is a ''chemical facility'' limited to a chemical manufacturing facility, a chemical distribution facility, or any other single specific type of facility that uses or stores potentially dangerous chemicals. Instead, the question of what constitutes a chemical facility turns not on the name or type of facility at issue, but instead on whether the facility uses, stores or otherwise possesses dangerous chemicals, and in what amount. The Department believes that a similar meaning of ''chemical facility'' is appropriate in implementing Section 550. Thus, subject to certain statutory exclusions which are discussed below in section II.L., the Department proposes to define ''chemical facility'' as ''any facility that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criterion identified by the Department.'' *See* proposed 6 CFR 27.100. We invite comment specifically on this interpretation or any alternative definitions of the term ''chemical facility.''

Of course, the term ''chemical facility'' is only significant in relation to other text in the statute. Section 550 also specifies that regulations promulgated under its authority are only applicable to a ''chemical facility'' that, ''in the discretion of the Secretary, presents [a] high level[] of security risk.'' Not all chemical facilities present a high level of security risk. (Indeed, not all ''chemical facilities'' on the RMP list are likely to present a high level of security risk.) Both H.R. 5695 and S. 2145 had specific provisions distinguishing the universe of all ''chemical facilities'' from the subset of ''high risk'' chemical facilities. H.R. 5695 would have required that ''at least one of the tiers established by the Secretary for the assignment of chemical facilities * * * shall be a tier designated for high-risk chemical facilities.'' 109th Cong. sec. 2 (2006) (proposed 6 U.S.C. 1802(c)(4)). Similarly, although S. 2145 identified the regulated chemical facilities as those with chemical substances of concern at sufficient threshold quantities, that bill also contained an instruction for the Secretary to identify separately a smaller subset of those facilities as high risk chemical facilities. S. 2145, 109th Cong. sec. 3(e) (2006). Thus, in both prior legislative proposals, Congress contemplated that only a subset of all facilities with threshold quantities of certain chemical substances would also qualify as ''high risk'' chemical facilities.

The Department believes that the phrase ''high level of security risk'' in Section 550 was likewise intended to apply only to a subset of the total population of ''chemical facilities.'' Under Section 550, the Secretary is explicitly given discretion to determine which chemical facilities fall within this subset, and thus which chemical facilities the Department will regulate. *See* Pub. L. 109–295, sec. 550(a) (2006) (''such regulations shall apply to chemical facilities that, in the discretion of the Secretary, present high levels of security risk''). *See also* 5 U.S.C. 701(a)(2) (precluding judicial review if ''agency action is committed to agency discretion by law''). *See also Webster* v. *Doe*, 486 U.S. 592 (1988); *Heckler* v. *Chaney*, 470 U.S. 821, 830 (1985) (recognizing the exception to the presumption of agency reviewability in 5 U.S.C. 701(a)(2)); *Steenholdt* v. *FAA*, 314 F.3d 633 (D.C. Cir. 2003); *Baltimore Gas & Elec. Co.* v. *FERC*, 252 F.3d 456, 459 (D.C. Cir. 2001); *Haig* v. *Agee*, 453 U.S. 280 (1981); *Merida Delgado* v. *Gonzales*, 428 F.3d 916 (10th Cir. 2005) (finding that the Attorney General's national security determination was not reviewable under the APA, where the authorizing statute provided no meaningful standard against which to judge the agency's action, the court did not have the necessary expertise to make the determination, and the Executive Branch has broad discretion to protect national security).

C. Determining Which Facilities Present a High Level of Security Risk

As a practical matter, the Department must utilize an appropriate process to determine which facilities present sufficient risk to be regulated. The Department may draw on many sources of available information, including existing Federal data and lists addressing particularly hazardous chemicals and particular chemical facilities. Such lists include the EPA RMP list (discussed above); the schedule of chemicals from the Convention on the Development, Production, Stockpiling and Use of Chemical Weapons and Their

Destruction, also known as the Chemical Weapons Convention or CWC (discussed above); the hazardous materials listed in Department of Transportation's Hazardous Materials Regulations (*see e.g.* 49 CFR 172.101); and the TSA Select Hazardous Materials List. The Department may also seek and analyze information from many other sources, including from experts in the industry, from state or local governments or directly from facilities that may qualify as high-risk. The Department requests comment on appropriate sources of information or methodologies for evaluating chemical facility risks. The Department also requests comments on whether, to the extent it looks to the nature of particular chemicals to classify facilities, classifications should be based on a ''hazard-class'' approach rather than classifications based on particular chemicals.

As discussed above, the Department has worked with the American Society of Mechanical Engineers (ASME) and others to design a RAMCAP ''Top-screen'' process for determining the potential security risk posed by many types of critical infrastructure facilities, including chemical facilities. The Department proposes to employ a risk assessment methodology system very similar to this RAMCAP Top-screen process to determine whether a facility qualifies as high-risk under Section 550, and seeks comment on how such a process—as described above and in Appendix A—should be employed for that purpose.

The proposed regulation would permit the Department to implement this type of Top-screen risk analysis process to screen facilities. The proposed language interprets the statutory phrase ''present[s] high levels of security risk'' to apply to a facility that, in the discretion of the Secretary, would present a high risk of significant adverse consequences for human life or health, national security or critical economic assets if subjected to a terrorist attack. *See* proposed 6 CFR 27.100, below. As noted, the statute gives the Secretary unreviewable discretion to make this determination. *See* Pub. L. 109–295, secs. 550(a), (b), Oct. 4, 2006.

A separate question is whether the Secretary can compel facilities that have not yet been deemed ''high risk'' to complete a risk assessment methodology such as the RAMCAP Top-screen, or punish them for failure to do so. In other words, can the Secretary mandate information submissions from a broad range of chemical facilities in order to screen facilities and determine which will qualify as high risk?

There are two arguments that the Secretary has such authority under Section 550. First, the authority to determine which facilities qualify as ''high risk'' implies necessary authority to obtain information to make that determination. *See, e.g.*, *United States* v. *Construction Products Research, Inc.*, 73 F.3d 464, 470 (2d Cir. 1996) (''at the subpoena enforcement stage, courts need not determine whether the subpoenaed party is within the agency's jurisdiction or covered by the statute it administers''); *Equal Employment Opportunity Commission* v. *Sidley Austin Brown & Wood*, 315 F.3d 696, 699–701 (7th Cir. 2002). Second, Section 550 states explicitly that the Secretary ''shall audit and inspect chemical facilities for the purposes of determining compliance with the regulations issued pursuant to this section.'' Since this provision can be read to permit the Department physically to inspect ''chemical facilities'' regardless of whether they qualify as ''high risk,'' the Department should impliedly have the less dramatic authority to obtain preliminary information for the same purpose. Indeed, the use of a Top-screen process will be a less onerous imposition for many facilities that may not, after due consideration, present high levels of security risk.

The following approach to screening facilities is reflected below in the proposed rule text:

- The Department could contact chemical facilities individually to request that they complete the process and could publish a notice requesting that all facilities fitting a certain profile (based on quantity of certain chemicals on site, hazard classification, or other criteria) complete an online Department risk assessment methodology (similar to the RAMCAP Top-screen) within a reasonable period.
- If any facility fitting the profiles identified in the notice or individually contacted by the Department fails to complete the risk assessment methodology within a reasonable period of time after receiving notification from the Department, the Department may, after attempting to consult with the facility, reach a preliminary determination, based on the information then available (which may include the facility's failure to complete the Top-screen process), that the facility ''presumptively presents a high level of security risk.''
- The Department would then issue a notice to the entity of this determination and, if necessary, order the facility to complete the Top-screen process. If the facility then fails to do so, it may be subject to penalties pursuant to Section 550(d), audit and inspection under Section 550(e) or, if appropriate, the remedy available under Section 550(g). *See proposed § 27.305, 245, 310.*
- If the facility completes the Top-screen process and is not then considered to present a high level of security risk, its status as ''presumptively high risk'' will terminate, and the Department will issue a notice to the facility to that effect.

The Department requests comments on this proposed process and the draft regulation at §§ 27.200 and 27.205 below.

In order to carry out this approach, the Department will need to identify the types or classes of facilities that should complete Top-Screen for screening purposes. To that end, the Department requests comments on whether the Department should request that:

- RMP facilities complete the Top-screen;
- Certain facilities subject to the Chemical Weapons Convention complete the Top-screen;
- Any other type or description of facilities complete the Top-screen.

The Department also anticipates permitting any chemical facility to voluntarily complete the Top-screen risk assessment process if the facility has not been notified or contacted by DHS for such screening.

D. Risk-Based Performance Standards for Security of Chemical Facilities

Among other things, Section 550 requires the Department to issue interim final regulations ''establishing risk-based performance standards for chemical facilities.'' The terms ''risk-based'' and ''performance standards'' both carry significant meaning.

The term ''performance standards'' has a long and well-known history. *See* Cary Coglianese et al., *Performance-Based Regulation: Prospects and Limitations in Health, Safety, and Environmental Protection*, 55 Admin. L. Rev. 705, 706–07 (2003). The term has repeatedly been defined: Performance standards

* * * state[] requirements in terms of required results with criteria for verifying compliance but without stating the methods for achieving required results. A performance standard may define functional requirements for the item, operational requirements, and/or interface and interchangeability characteristics. A performance standard may be viewed in juxtaposition to a prescriptive standard which may specify design requirements, such as materials to be used,

how a requirement is to be achieved, or how an item is to be fabricated or constructed.

OMB Circular A–119 (Feb. 10, 1998); *see also* Coglianese, *Performance-Based Regulation*, 55 Admin. L. Rev. at 709:

A performance standard specifies the outcome required, but leaves the specific measures to achieve that outcome up to the discretion of the regulated entity. In contrast to a design standard or a technology-based standard that specifies exactly how to achieve compliance, a performance standard sets a goal and lets each regulated entity decide how to meet it.

Note also that Executive Order 12,866 specifies the use of performance standards:

Each agency shall identify and assess alternative forms of regulation and shall, to the extent feasible, specify performance objectives, rather than specify the behavior or manner of compliance that regulated entities must adopt.

Exec. Order 12,866, 58 FR 51,735 (Oct. 4, 1993), as amended by Exec. Order 13258, 67 FR 9385 (Feb. 28, 2002).

Here, Section 550 specifies that the required ''performance standards'' must be ''risk-based.'' Although the term ''risk-based'' is not specifically defined in Section 550, the language of Section 550 along with other recent legislative activity yield an understanding of the ''risk-based'' standards. The term ''risk-based'' modifies ''performance standard'' and indicates that the performance standards established under Section 550 will mandate the most rigorous levels of protection and regulatory scrutiny for facilities that present the greatest degrees of security risk. Prior legislative proposals on chemical security would have required this result expressly through risk-based tiering of facilities based on the potential affects on human health caused by a terrorist attack at a facility, potential impact on national security, or potentially critical economic consequences. *See* H.R. 5695, 109th Cong. sec. 2 (2006), S. 2145, 109th Cong. (2006). In many of those prior proposals, the Department would have been required to analyze relative risk first, sort facilities into appropriate risk-based tiers, then create standards requiring more robust levels of protection for higher risk tiers. In addition, prior legislative proposals specified more frequent regulatory reviews, inspections, and security plan updates for higher risk facilities.

The Department believes that the ''risk-based performance standards'' and the Section 550 Program should indeed incorporate risk-based tiering. As addressed above, Section 550 provides the Department with authority to regulate those chemical facilities ''that, in the discretion of the Secretary, present high levels of security risk.'' Thus, the risk-based tiers would differentiate and create tiers among those facilities that, as described above, qualify as presenting ''high levels of security risk'' and are thus ''covered facilities.'' The Department seeks comment on this notion of risk-based tiering among high-risk facilities. Specifically:

- How many risk-based tiers should the Department create?
- What should be the criteria for differentiating among the tiers?
- What types of risk should be most critical in the tiering?
- How should the performance standards differ among risk-based tiers?
- What additional levels of regulatory scrutiny (e.g. frequency of inspections, plan reviews, and updates) should apply to each tier?

The Department would establish the risk-based performance standards through the regulatory language below and intends to issue guidance periodically regarding compliance with the standards. Please note that specific security performance variables in the standards among tiers for the covered facilities are likely to contain sensitive information regarding covered facility vulnerability or security. Thus, certain elements of guidance on the application of these standards by tier will be provided to covered facilities pursuant to the information protections provisions of Section 550.

E. Vulnerability Assessments and the Development and Implementation of Site Security Plans for Chemical Facilities

The first sentence of Section 550 requires the Department to mandate that ''high risk'' chemical facilities, known here as ''covered facilities,'' perform Vulnerability Assessments and develop and implement Site Security Plans.

1. Vulnerability Assessments

A Vulnerability Assessment is an examination of how a covered facility would address specific types of possible terrorist threats. The assessment also examines the aspects of the covered facility that pose the most significant vulnerabilities to terrorist attack. The Department has worked with its partners to develop a methodology for this purpose which may be refined to fit the needs of this program's Vulnerability Assessment program. The methodology is described in detail in Appendix B. The Department seeks comment on how this methodology should be refined to serve as a basis for Vulnerability Assessments under Section 550.

Covered facilities, those that qualify as ''high risk'' under Section 550, will be required to complete and submit Vulnerability Assessments. DHS will review each Vulnerability Assessment, and the Department may also scrutinize the Vulnerability Assessments in the course of a facility audit (discussed *infra*). In addition, a covered facility Vulnerability Assessment will serve two other central purposes: (1) The Department will use the results of Vulnerability Assessments to confirm that covered facilities have been assigned to the appropriate risk-based tiers; and (2) Each covered facility's Site Security Plan (discussed below) will be required to address each of the vulnerabilities identified in the Vulnerability Assessment. *See* Pub. L. 109–295, sec. 550(a), Oct. 4, 2006 (''Provided further, That such regulation shall permit each facility, in developing and implementing Site Security Plans, to select layered security measures that, in combination, appropriately address the Vulnerability Assessment and the risk-based performance standard for security for the facility.'') Covered facilities also have continuing obligations, which vary based on their risk-based tier, to maintain and periodically update their Vulnerability Assessment.

As noted, the Department will sort the covered facilities into tiers, based on risk. The Department may have three or four tiers, with the highest risk facilities in tier one. The tiering decisions will be based on a number of factors, including information from the Top-screen, intelligence information, and information from other appropriate sources. As discussed below in a section II. K., the Department considers the methods for determining these tiers to be sensitive anti-terrorism information that may be protected from further disclosure.

Many chemical facilities have already performed Vulnerability Assessments under models that are similar in purpose and effect to the RAMCAP methodology identified above. For a number of covered facilities, particularly in the initial year of the program, these Vulnerability Assessments will be acceptable in lieu of completing the Department's vulnerability analysis. Through the Alternative Security Program (ASP) provisions described herein, the proposed regulation will permit the Assistant Secretary to accept existing chemical facility Vulnerability Assessments, subject to any necessary revisions or supplements, where the

assessments are sufficiently similar to the Department's process to be effective. The Department is considering accepting any Vulnerability Assessments methodologies that are certified by the Center for Chemical Process (CCPS) as equivalent to the CCPS Methodology; and will review other Vulnerability Assessments submitted as ASPs. See proposed 6 CFR 27.215(a).

2. Site Security Plans

Under Section 550, the Department must also require that ''high risk'' chemical facilities develop and implement ''Site Security Plans.'' The statute specifies that the Department ''shall permit each facility, in developing and implementing Site Security Plans, to select layered security measures that, in combination, appropriately address the Vulnerability Assessment [for the facility] and the risk-based performance standards for security for the facility.'' This sentence identifies two critical statutory mandates.

First, as indicated, a Site Security Plan must address both the ''Vulnerability Assessment'' for the covered facility and the applicable ''risk-based performance standards.'' To address the Vulnerability Assessment, the plan must identify and describe the function of the measures the covered facility will employ to address each of the facility's vulnerable areas. Focusing on those vulnerable areas, the Site Security Plan must then address specific modes of potential terrorist attack and how each would be deterred or otherwise addressed. For example, a facility must select, develop and describe security measures intended to address potential attacks involving: (1) A VBIED (vehicle borne improvised explosive device); (2) a water-borne explosive device (if applicable); (3) an assault team; (4) individual(s) on the premises with explosives or a firearm, or (5) theft of certain chemicals; and (6) the possibility of insider or cyber sabotage.

In addition, a covered facility's Site Security Plan must identify how the layered security measures selected by the covered facility meet the Department's risk-based performance standards. Although this process can be different for each facility and will vary depending on the unique risks presented in each, the performance standards will typically require covered facilities to develop and explain security measures to:

- Secure and monitor the perimeter of the facility;
- Secure and monitor restricted areas or potentially critical targets within the facility;
- Control access to the facility and to restricted areas within the facility by screening and/or inspecting individuals, deliveries, and vehicles as they enter; including,
  - Measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate an attack or actions having serious negative consequences for the population surrounding the facility; and
  - Measures implementing a regularly updated identification system that checks the identification of facility personnel and other persons seeking access to the facility and that discourages abuse through established disciplinary measures;
- Deter vehicles from penetrating the facility perimeter, gaining unauthorized access to restricted areas or otherwise presenting a hazard to potentially critical targets;
- Secure and monitor the shipping and receipt of hazardous materials from the facility;
- Deter theft or diversion of potentially dangerous chemicals;
- Deter insider sabotage;
- Deter cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, Supervisory Control And Data Acquisition (SCADA) systems, and other sensitive computerized systems;
- Develop and exercise an emergency plan to respond to security incidents internally and with assistance of local law enforcement and first responders;
- Maintain effective monitoring, communications and warning systems, including,
  - Measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained;
  - Measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department; and
  - Measures to allow the facility to promptly identify and respond to security system and equipment failures or malfunctions;
- Ensure proper security training, exercises, and drills of facility personnel;
- Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or potentially critical targets;
- Escalate the level of protective measures for periods of elevated threat;
- Address specific threats, vulnerabilities, or risks identified by the Assistant Secretary for the particular facility at issue;
- Report significant security incidents to the Department;
- Identify, investigate, report, and maintain records of significant security incidents and suspicious activities in or near the site;
- Establish official(s) and an organization responsible for security and for compliance with these standards;
- Maintain appropriate records; and
- Address any additional performance standards the Assistant Secretary may specify.

The types and intensity of measures necessary to satisfy these standards will depend, of course, on the risk-based tier of the covered facility at issue. Covered facilities will also have a continuing obligation, which will vary based on their risk-based tier, to maintain and periodically update their Site Security Plan.

Aside from the performance standards identified in proposed § 27.230, the Department will also consider adopting other performance standards from the following meriting security regulatory provisions: 33 CFR 105.250 (Security systems and equipment maintenance); 33 CFR 105.255 (Security measures for access control); 33 CFR 105.260 (Security measures for restricted areas); 33 CFR 105.275 (Security measures for monitoring); 33 CFR 105.280 (Security incident procedures). The terms of these provisions, if adopted, would need modification. For example, the provisions related to security measures for restricted areas identifies such areas to include ''[s]hore areas immediately adjacent to each vessel moored at the facility.'' 33 CFR 105.260. The Department requests comments on whether these or other MTSA regulatory provisions should be adopted in modified form. The Department also requests specific comments on how, if adopted, the Department should modify these provisions.

Section 550 also strikes a careful balance between the Department's regulatory authority and a covered facility's discretion to select security measures. Three separate provisions are relevant to this balance. As noted above, the term ''performance standards'' has long been defined to ''specif[y] the outcome required, but leave[] the specific measures to achieve that outcome up to the discretion of the regulated entity.'' See above, Coglianese, *Performance-Based Regulation*, 55 Admin. L. Rev. at 709. The statute also mandates that the Department ''*shall*

permit each facility * * * *to select* layered security measures * * * '' to address its vulnerabilities and the performance standards. Pub. L. 109–295, sec. 550(a), Oct. 4, 2006 (emphasis supplied). Further, the statute specifically prohibits the Department from rejecting a Site Security Plan, because it does not incorporate a specific type of security measure: ''[T]he Secretary *may not* disapprove a Site Security Plan submitted under this section based on the presence or absence of a particular security measure.'' *Id.* (emphasis supplied).

The meaning of these three provisions was not in dispute at the time of Congress's Conference on the Appropriations Bill on September 29, 2006. Indeed, as Representative Markey and others noted, ''the Department of Homeland Security is prohibited from disapproving of a facility's security plan because of the absence of any specific security measure.'' *See* 152 Cong. Rec. H7907 at H7913 (daily ed. Sept. 29, 2006).

Although the Department may not require that a covered facility select a specific measure to enhance its security, the Department may ''disapprove a Site Security Plan if [the plan] fails to satisfy the risk-based performance standards established by this section.'' Pub. L. 109–295, sec. 550(a), Oct. 4, 2006. The Department understands Section 550 to require a fairly straightforward process: The Department may disapprove a Site Security Plan for failing to satisfy the risk-based performance standards, but may not mandate that the covered facility cure the deficiency by implementing one particular security solution. In other words, the Department cannot take the position that only one type of action or measure can meet the performance standards. Nor can the Department indirectly compel the covered facility to choose a particular measure preferred by the Department by ruling out all other possible alternatives. (Thus, the Department may not engineer the performance standards to permit only one actual security option for a covered facility.) In practical terms, this means that covered facilities will have the opportunity to determine how to remedy a deficient plan. Thus, following a Site Security Plan ''disapproval,'' the Department will permit the covered facility to select a different and more robust combination of security measures and present its plan again. The Department will then judge the revised resubmitted plan against the performance standards. The covered facility must meet the security outcome required in the performance standards, but shall be given appropriate latitude in how to reach that outcome.

The proposed regulations create a system for review and approval or disapproval of Site Security Plans consistent with this language of Section 550. *See* proposed 27.240. The Department seeks comment on how this proposed process could be improved consistent with the statute.

3. Alternative Security Programs

Section 550 expressly anticipates that covered facilities may prefer to submit Alternative Security Programs (ASP) established by private sector entities, state, or local governments. Pub. L. 109–295, Oct. 4, 2006. Section 550 gives the Secretary discretion to approve such Alternative Security Programs when the Secretary finds that the program meets the requirements of the interim final rule. In the rule text offered below, we define Alternative Security Program as ''a third-party or industry organization program, a state or Federal government program or any element of aspect thereof that the Assistant Secretary has determined provides an equivalent level of security to that established by this subchapter.''

It is possible that an appropriate ASP could be used in part or in whole, including in the place of a Vulnerability Assessment or a Site Security Plan, or both, depending on the nature of the ASP. The Department may choose to approve or disapprove an ASP for a specific covered facility or on a broader scale by approving or disapproving an industry association or government program as an ASP for use in accordance with this rule.

Under the Alternative Security Program provisions in proposed 27.235, the Secretary may specifically designate existing programs, Vulnerability Assessments, and Site Security Plans completed thereunder as satisfactory under Section 550. The Department will begin accepting requests for approval of existing Alternative Security Programs on December 28, 2006. Such requests should be made to the Assistant Secretary. Guidance for such submissions will be made available on the Department's Web site.

4. Guidance Regarding Site Security Plans

Although the Department may not mandate any particular security measure, it may issue guidance specifying what types of measures, if selected, would presumptively satisfy the performance standards. Such guidance would identify options for meeting the standards but would not mandate any particular choice of measures to meet the performance standards. A covered facility would always be permitted to select other measures (whether contemplated by the guidance or not) that could satisfy the performance standards. The Department intends to seek public comment prior to issuance of such guidance to the extent consistent the level of information protection contemplated by the statute.

F. Audits and Inspections

Section 550(e) gives the Department the authority to audit and inspect chemical facilities in order to determine compliance with its requirements. This section imposes an affirmative duty on chemical facilities to cooperate with authorized DHS officials and allow inspections and audits. DHS expects that it will carry out this audit and inspection authority through the Assistant Secretary for Infrastructure Protection and his designees, or for certain lower risk tiers of facilities, through appropriate third party auditors. The Department is considering a program for certain tiers of facilities involving the certification and use of these Third-Party Auditors. *See* proposed § 27.245.

DHS (or, in appropriate cases, a DHS-certified Third-Party auditor) will conduct inspections of each covered facility before issuing final approval for a Site Security Plan. DHS could also conduct audits and inspections outside of the Site Security Plan approval cycle in exigent circumstances. By its terms, this inspection authority extends to all chemical facilities. Although it is possible that a facility could be inspected to determine whether it presents a high security risk under the statute, the proposed rule suggests a different protocol in most cases. *See, e.g.*, proposed 6 CFR 27.200(c).

Generally speaking, DHS will conduct inspections at reasonable times and in a reasonable manner given all of the circumstances surrounding the particular chemical facilities' operations and the threat information that is available to DHS at any given time. Following promulgation of the interim final rule, the Assistant Secretary will issue guidance to those officials and inspectors who will be conducting inspections and will closely monitor the results of such inspections. This ensures that there will be uniformity in inspection procedures and in Departmental enforcement of these regulations.

During inspections of chemical facilities, authorized DHS officials (or third party auditors under certain circumstances) may inspect property or

equipment, view and/or copy records, and audit records and/or operations. DHS expects that it will conduct inspections during regular business hours of 9 a.m. to 5 p.m. DHS will provide facility owners with advance notice of inspections, except where the Under Secretary or Assistant Secretary determines that exigent circumstances preclude notice and personally approves such an inspection. The circumstances leading the Under Secretary or Assistant Secretary to approve an unannounced inspection might include threat information warranting immediate action.

G. Background Checks

A proposed standard on personnel surety would require covered facilities to ''perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or potentially critical targets.'' The Department believes that this component of the security standards will enhance security in what would otherwise be a significant potential vulnerability. In crafting and enforcing this standard, the Department understands that many facilities covered under these regulations already perform background checks on employees and those who have access to the facilities. The Department therefore encourages comment from industry, labor unions, and individuals on their experiences with this subject.

The Department is considering several components of this issue, including the following: (1) The individuals for whom background checks would be conducted (whether that would include employees with access to restricted areas of the facility, all employees, unescorted visitors, all individuals with access to the facility or any combination of the above); (2) The timing of this requirement particularly as it applies to employees (i.e., whether a background check should be conducted in association with the hiring process and, if so, how to address this requirement for current employees); (3) The type of background check that should be conducted and therefore the type of personally identifiable information that would be required of these individuals, such as biometrics. Background checks might include a terrorism name check against the consolidated Terrorist Screening Database, a fingerprint-based check against terrorism and/or criminal history records, or a broader law enforcement or immigration status check; (4) Whether the government should conduct these checks or whether the industry could use authorized third parties to conduct the checks. The Department requests comments on these issues.

In another context, the Department will require background checks for all individuals having access to ''secure areas'' of the maritime transportation system when those individuals are not accompanied by someone who already has a sufficient background check. *See* 46 U.S.C. 70105(a); *see also* 71 FR 29,396 (May 22, 2006) (notice of proposed rulemaking to implement the Transportation Worker Identification Credential (''TWIC'') program in the maritime sector). Would an access restriction such as that in the proposed TWIC program be appropriate in the context of covered chemical facilities? Should any segment of chemical facility personnel participate in TWIC or a similarly structured program? The Department requests comments on these questions.

Second, the Department will consider appropriate grounds for denying access or employment to individuals when their background check reveals an anomaly. In a different context, the Department has developed a list of ''disqualifying crimes,'' as part of a threat assessment process, that prevent individuals from gaining access to certain facilities or privileges. *See* 46 U.S.C. 70105(c); 71 FR 29396 (May 22, 2006) (proposing a list of disqualifying crimes for Hazardous Materials Endorsements (HME) and the Transportation Worker Identification Credential (TWIC) program); *see also* 27 CFR 555.26(c) (ATF prohibited persons criteria). Should the background check standards used in the HME and TWIC contexts apply to chemical facility security programs? (Preliminarily, the Department believes that any person possessing a valid TWIC card would have undergone sufficient background checks for purposes of the Section 550 security standards.)

The Department will consider, as one option, the background check process employed by ATF. *See* 27 CFR 555.33. In this process, licensees submit to ATF the names and identifying information for persons and employees authorized to possess explosive materials in the course of employment. ATF then conducts a background check and provides a ''letter of clearance'' or a written determination that the individual should not hold a position requiring the possession of explosive materials. This process also includes an appeals process. *See* 27 CFR 555.33(b). The Department requests comments on whether this type of process, along with an associated fee charged to facility owners and operators would be appropriate.

H. Approval and Disapproval of Vulnerability Assessments and Site Security Plans

Section 550 states that ''the Secretary shall review and approve each vulnerability assessment and site security plan required under this section.'' *See* Pub. L. 109–295, sec. 550(a). To implement this provision of the statute, and consistent with the implementation plan discussed herein, the Department will require all covered facilities to submit Vulnerability Assessments and Site Security Plans to the Department. The Department will review and approve or disapprove each Vulnerability Assessments in accordance with proposed § 27.215. If the Department approves the Vulnerability Assessment, the Department will issue a letter to the covered facility so stating.

After a review of the Site Security Plan, the Department will preliminarily approve it or disapprove it. In the case of a preliminary approval, the Department will issue a Letter of Authorization to the covered facility. After preliminarily approving a Site Security Plan, the Department will inspect each facility in order to determine compliance with the requirements of this part. (The inspection provisions are discussed more fully above). After issuing a Letter of Authorization, the Department will schedule an inspection of the facility. After the inspection, if the Department concludes that the Site Security Plan addresses the vulnerabilities identified in the Vulnerability Assessment, satisfies the risk-based performance standards, and has been satisfactorily implemented, the Department will issue a Letter of Approval to the covered facility.

If a Vulnerability Assessment or Site Security Plan fails to satisfy the specified, ''risk-based performance standards,'' the Department will disapprove the relevant document. *See* Pub. L. 109–295, Sec. 550(a) (''the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section''). If the Department concludes that the Site Security Plan has not been satisfactorily implemented, the Department will consult with the covered facility as provided in proposed 27.240(b) and schedule a second inspection.

When disapproving the Vulnerability Assessment or Site Security Plan, the Department will provide the facility with a written explanation as to why the

Department disapproved the assessment or plan. Taking into account the nature of the facility and other relevant circumstances, the Department will also specify a date by which the facility must provide to the Department a modified Vulnerability Assessment or Site Security Plan. If a facility fails to provide an acceptable Vulnerability Assessment or Site Security Plan by the specified date, the Department may issue an Order Assessing Civil Penalty under proposed § 27.305.

As with other elements of implementing Section 550, however, the implementation of the receipt, review, and approval of Vulnerability Assessments and Site Security Plans will proceed in a phased approach based on the tiering of covered facilities. *See* proposed § 27.230. The Department will provide covered facilities with a schedule identifying timing requirements for submitting and updating Vulnerability Assessments and Site Security Plans under proposed §§ 27.215 and 27.225, as well as the timing, frequency, and nature of the inspections required under proposed § 27.245.

Facilities in Tier One must submit Vulnerability Assessments to the Department within 60 calendar days. These facilities must submit Site Security Plans within 120 calendar days.

The Department will also require that covered facilities update or renew their Vulnerability Assessments and Site Security Plans on a regular basis or as needed basis. The timing for this requirement will also depend upon the tiering of covered facilities. In general, the Department believes that Tier One facilities should update and renew their Vulnerability Assessments and Site Security Plans each year; Tier two facilities should update and renew their Vulnerability Assessments and Site Security Plans on two-year cycles; and any additional tiers should update and renew their Vulnerability Assessments and Site Security Plans on three-year cycles. For individual facilities, and based on information concerning those particular facilities, the Department may determine that more or less frequent update and renewal cycles are appropriate. The Department seeks comment on this strategy for updating and renewing vulnerability assessments and site security plans.

I. Remedies

The proposed regulation specifies the remedies that the Department can use to achieve compliance with the requirements of this part. At the most basic level, the Department can issue an Order for Compliance pursuant to proposed § 27.300. The Assistant Secretary may issue such an Order for any instance of noncompliance, such as a chemical facility's refusal to complete a Top-screen, failure to allow DHS to conduct an inspection, or failure to update a Site Security Plan.

Where the Department finds that there is a repeated pattern of noncompliance or egregious instances of noncompliance with the requirements of this part, the Department may issue civil penalties of not more than $25,000 for each day during which the violation continues (*see* 550(d) and 49 U.S.C. 70119(a)) and/or order chemical facilities to cease operations (*see* section 550(g)). The Department considers the cease operations order to be an extraordinary authority and would use it only so along as other remedial provisions hereunder could not achieve compliance.

The proposed requirements in § 27.305 and § 27.310 specify the methods by which DHS will issue civil penalties and cease operation orders. Proposed § 27.315 outlines general requirements that apply to all orders, including orders for compliance, assessing civil penalty, and to cease operations. Of note, the proposed regulation provides that all of these orders are inoperative while an appeal is pending under § 27.320 and that an order issued under this subpart does not constitute final agency action until a chemical facility exhausts all appeals or the time for such appeals has lapsed. Chemical facilities must exhaust all appeals specified in this regulation before pursuing an action in Federal District Court. As noted, the Department recognizes that an Order to Cease Operations would likely be litigated immediately after issuance. This authority would be utilized when no other options will achieve the required result. At the same time, the Department recognizes the necessity and importance of these tools to foster incentives for compliance.

Finally, as the Department indicates in the proposed regulation, DHS may issue appropriate guidance and necessary forms for the issuance of Orders under this subpart. Such guidance might include procedures for, notifications made, and meetings conducted pursuant to §§ 27.300, 27.305, 27.310, and 27.315.

In using these administrative remedies, the Department has sought to include several opportunities for review of Departmental decisions, including opportunities for chemical facilities to consult with the Department, to present additional evidence, to defend against any alleged violations, and to explain its efforts to rectify alleged violations. The Department recognizes that these are powerful tools and accordingly wants to ensure that there are sufficient mechanisms in place for facilities to respond to the use of these tools. The Department seeks comment on its proposed requirements for the use of these administrative remedies.

J. Objections and Appeals

This rule proposes to provide chemical facilities with various opportunities throughout the process to object to a Departmental decision. The Department intends for the process to be as simple and quick as possible but recognizes that the review needs to be meaningful. The proposed rule provides chemical facilities with two mechanisms with which to challenge a Departmental decision, an objection and an appeal.

The basic mechanism is called an ''objection.'' A chemical facility may object to (1) a determination that the facility presents a high level of security risk, (2) its placement in a risk-based tier, and/or (3) a disapproval of its Site Security Plan. To do so, a chemical facility must file an objection according to the procedures specified in the pertinent section—either 6 CFR 27.205(c) ''Determination that a Chemical Facility Presents a High Level of Security Risk—Objection,'' 6 CFR 27.220(b) ''Tiering—Objection,'' or 6 CFR 27.240(c) ''Review and Approval of Vulnerability Assessments and Site Security Plans—Objection to Disapproval of Site Security Plan.'' Under the scheme for these proposed regulatory provisions, a chemical facility files an Objection and may request a meeting, and the objection could be addressed in as few as 20 days.

The other review mechanism available to chemical facilities is an appeal. The Department recognizes that certain matters, such as a final determination disapproving a Site Security Plan or the issuance of an Order, can be of significant consequence. As a result, these matters require a more lengthy review. To that end, the Department is proposing to provide chemical facilities with an opportunity to appeal any Order issued under this regulation and any determination disapproving a Site Security Plan. Proposed § 27.320(a)(1) and (2) allows chemical facilities to appeal to the Under Secretary and General Counsel for Site Security Plan disapprovals and all Orders except Orders to Cease Operations. Proposed § 27.320(a)(3) allows chemical facilities to appeal to the Deputy Secretary for Orders to Cease Operations. The

adjudicating official may then affirm, revoke, or suspend a determination or Order.

Also of note in this section, any decision made by an adjudicating official under § 27.320(c) of this section constitutes final agency action. In addition, the failure of a chemical facility to file an appeal in accordance with the procedures and time limits contained in this section results in the Assistant Secretary's determination or issuance of an Order becoming final agency action. Finally, a chemical facility will need to exhaust the appeal processes specified in these regulatory provisions before pursuing an action in Federal District Court. The Department requests comment on the proposed process for objections specified in § 27.205(c), § 27.220(b), § 27.240(c), and § 27.320, including comment on specific provisions in the process and the adequacy of these procedures generally.

K. Chemical-Terrorism Vulnerability Information

Section 550(c) of the Homeland Security Appropriations Act of 2007 provides the Department with the authority to protect from inappropriate public disclosure any information developed pursuant to Section 550, ''including vulnerability assessments, site security plans, and other security related information, records, and documents.'' In considering this issue, the Department recognized that there are strong reasons to avoid the unnecessary proliferation of new categories of sensitive but unclassified information, consistent with the President's Memorandum for the Heads of Executive Departments and Agencies of December 16, 2005, entitled ''Guidelines and Requirements in Support of the Information Sharing Environment.'' With Section 550(c), however, Congress acknowledged the national security risks posed by releasing information relating to the security and/or vulnerability of high risk chemical facilities to the public generally. For all information generated under the chemical security program established under Section 550, Congress gave the Department broad discretion to employ its expertise in protecting sensitive security and vulnerability information. Accordingly, the Department proposes herein a category of information for certain chemical security information called Chemical-terrorism Security and Vulnerability Information (CVI).

Congress also recognized that, to further the national security interests addressed by Section 550, the Department must be able to vigorously enforce the requirements of Section 550, and that these efforts may include the initiation of proceedings in federal district court. At the same time, it is essential that any such proceedings not be conducted in such a way as to compromise the Department's ability to safeguard CVI from public disclosure. For this reason, Congress provided that, in the context of litigation, the Department should protect CVI more like Classified National Security Information than like other sensitive unclassified information. This aspect of Section 550(c) has no analog in other sensitive unclassified information regimes.

1. Protection From Public Disclosure

In setting forth the minimum level of security the Department must provide to CVI, Section 550(c) refers to 46 U.S.C. 70103, which was enacted by the Maritime Transportation Security Act of 2002: ''Notwithstanding any other provision of law and subsection (b), information developed under this section * * * shall be given protections from public disclosure *consistent with similar information developed by chemical facilities subject to regulation under section 70103 of* title 46, United States Code.'' (Emphasis supplied.) Section 70103(d) provides that ''information developed under this chapter [pertaining to Port Security] is not required to be disclosed to the public.'' As discussed below, by regulations existing at the time Congress enacted Section 550, security plans issued pursuant to 46 U.S.C. 70103 constitute Sensitive Security Information (SSI), the public disclosure of which is heavily regulated. *See* 49 CFR 1520.5(b)(2)(ii). It is the Department's view that by requiring the Department's handling of CVI to be ''consistent with'' information covered under 46 U.S.C. 70103, Congress intended CVI to receive a level of security not inconsistent with that provided to SSI. Yet the Department also believes that Section 550(c) provides the Department with broad discretion and maximum flexibility to employ more rigorous standards to protect CVI from inappropriate public disclosure as necessary. Furthermore, Section 550(c) provides specifically that ''in any proceeding to enforce this section, * * * information submitted to or obtained by the Secretary, and related vulnerability or security information, shall be treated as if the information were classified material.''

Section 114(s) of title 49 of the U.S. Code requires TSA to promulgate regulations governing the protection of certain sensitive unclassified information, including information that would ''be detrimental to the security of transportation'' if publicly disclosed. 49 U.S.C. 114(s). In response, TSA issued, 49 CFR part 1520, which establishes certain requirements for the recognition, identification, handling, and dissemination of Sensitive Security Information or ''SSI,'' including restrictions on disclosure and civil penalties for violations of those restrictions. Under the regulations, SSI includes any security programs issued, established, required, received or approved by the Department of Transportation or the Department. These include any vessel, maritime facility or port area security plan required by Federal law and any national or area security plan prepared pursuant to 46 U.S.C. 70103. In addition, SSI includes selection criteria used in security screening processes, Security Directives and Information Circulars, threat information and vulnerability assessments concerning transportation facilities, and technical specifications of security screening and detection systems and devices.

Access to SSI is strictly limited to those persons with a need to know, as defined in 49 CFR 1520.11, and to those persons to whom TSA makes a specific disclosure authorization under 49 CFR § 1520.15. In general, a person has a need to know specific SSI when he or she requires access to the information: (1) To carry out transportation security activities that are government-approved, -accepted, -funded, -recommended, or -directed, including for purposes of training on, and supervision of, such activities; (2) to provide legal or technical advice to airport operators, air carriers or their employees regarding security-related requirements; or (3) to represent covered persons in judicial or administrative proceedings regarding security-related requirements. Individuals with a need to know or to whom SSI is disclosed pursuant to § 1520.15, including in the context of an administrative enforcement proceeding, may, at TSA or Coast Guard's discretion, be required to satisfactorily complete a security background check to gain access to SSI. Civil litigants do not have a regulatory need to know, unless they fall into the categories noted above.

The SSI regulations also set forth restrictions on the disclosure of SSI. These restrictions apply to individuals and entities with a need to know as well as others deemed by 49 CFR 1520.7 to be ''covered persons.'' The restrictions, which are set forth in 49 CFR 1520.9, include a duty to protect information by, among other things, only disclosing or providing access to SSI to covered

persons with a need to know and storing SSI in a secured container. Section 1520.9 also requires any covered person to promptly report to TSA or other applicable agency any unauthorized disclosure of SSI. As part of the Homeland Security Appropriations Act of 2007, Congress gave TSA the authority to assess a civil penalty of up to $50,000 for each violation of 49 CFR part 1520 by a person provided access to SSI under Section 525(d).

Congress has long authorized the protection of sensitive unclassified information in the context of nuclear facilities. *See* 42 U.S.C. 2167, 2168 (authorizing Nuclear Regulatory Commission (NRC) to issue regulations and civil and criminal penalties, protecting safeguards information or ''SGI'' from inadvertent release and unauthorized disclosure that might compromise security of nuclear facilities or materials); *see also* 10 CFR 73.21 (defining SGI to include ''security measures for the physical protection and location of certain plant equipment vital to the safety of production or utilization facilities''); § 73.21(c) (authorizing access to SGI where both valid ''need to know'' information and authorization based on an appropriate background investigation under 10 CFR part 73); § 73.21(d) (setting forth physical protection requirements). And Congress authorized a similar regime more recently to protect voluntarily submitted critical infrastructure information as part of the Homeland Security Act of 2002. *See* 6 U.S.C. 131 *et seq.*; *see also* 6 CFR 29.4 (describing Protected Critical Infrastructure Information (PCII) program); § 29.7 (requiring background checks for access to PCII and setting forth protection guidelines for handling of PCII); § 29.8 (prohibiting disclosure of PCII except in limited circumstances).

In designing a regulatory scheme to govern disclosure of CVI, the Department has considered the laws regulating SSI, SGI, and PCII. The Department believes that by specifying 46 U.S.C. 70103, Congress provided an avenue to embrace many of the fundamental elements of SSI, except that Congress was more explicit as to the use of information in legal proceedings. Accordingly, the Department proposes that, except as provided below in connection with administrative and judicial proceedings, CVI should be treated in a manner similar to SSI. The Secretary shall administer this Section consistent with section 550, including appropriate sharing with State and local officials, law enforcement officials, and first responders.

2. Protection From Disclosure in Litigation

Section 550(c) provides that ''in any proceeding to enforce this section, * * * information submitted to or obtained by the Secretary, and related vulnerability or security information, shall be treated as if the information were classified material.'' By segregating this information for separate treatment under the statute, Congress sought to provide significant protection for CVI in the course of enforcement proceedings.

Classified information is disclosed in litigation only under extraordinary circumstances. Executive Order 13292, Further Amendment of Executive Order 12958, as Amended, Classified National Security Information, defines ''classified national security information'' or ''classified information'' as ''information that has been determined pursuant to this order or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified statutes when in documentary form.'' E.O. 12958 § 6.1(h). More specifically, information may be classified if, among other things, the original classification authority determines that ''the unauthorized disclosure of the information reasonably could be expected to result in damage to national security, which include defense against transnational terrorism, and the original classification authority is able to identify and describe the damage.'' E.O. 13292 § 1.1(a)(4).

By statute, Congress has defined classified information more broadly in certain contexts. The Classified Information Procedures Act (CIPA), which sets forth the proper handling for disclosure of classified information in criminal proceedings, defines classified information as ''any information or material that has been determined by the United States Government pursuant to an Executive order, statute, or regulation, to require protection against unauthorized disclosure for reasons of national security and any restricted data, as defined in paragraph r. of section 11 of the Atomic Energy Act of 1954.'' 18 U.S.C. App. 3 sec. 1(a). The same definition is used in civil proceedings involving charges of providing material support or resources to designated foreign terrorist organizations. 18 U.S.C. 2339B(g)(1) (''the term 'classified information' has the meaning given that term in section 1(a) of [CIPA]'').

Under section 2339B, where a party seeks classified information in discovery, the court may authorize one of the following as a substitute upon a sufficient *ex parte* showing by the Government: (1) A redacted version of the classified documents; (2) a summary of the information contained in the classified documents; or (3) a statement admitting relevant facts that the classified documents would tend to prove. 18 U.S.C. 2339B(f)(1)(A). Section 2339B also provides protections against the disclosure of classified information through witness testimony. Upon a Government objection, the court will consider an *ex parte* proffer by the Government on what the witness is likely to say and a proffer from the defendant of the nature of the information the defendant seeks to elicit. *Id.* at 2339B(f)(3). If the court denies any such requests by the Government, the Government can take an immediate, expedited interlocutory appeal. *Id.* at 2339B(f)(1)(C), (5). Notably, section 2339B states that it does not prevent the Government from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege. *Id.* at 2339B(f)(6).

The procedures set forth in CIPA are substantially similar to those in section 2339B. One notable difference is that the Government may submit to the court an affidavit of the Attorney General certifying that disclosure of classified information would cause identifiable damage to the national security of the United States and explaining the basis for the classification of such information. 18 U.S.C. App. sec. 6(c)(2). Where the Government has filed such an affidavit but the court concludes that there is no adequate substitute for the classified information sought by the defendant, the court may dismiss the Government's indictment or information, or order something in lieu of complete dismissal such as dismissing or finding for the defendant only with respect to certain counts. *Id.* at 6(e).

As stated above, Section 550(c) provides only that, in the course of proceedings under section 550, CVI ''shall be treated as if the information were classified material.'' Section 550(c) does not specify to which procedure/s governing the handling of classified material the Department should look—i.e., ordinary civil litigation procedures, civil procedures under section 2339B, criminal procedures under CIPA, or some other regime. The Department is considering alternatives and proposes here that in the context of judicial or administrative enforcement proceedings, the disclosure of CVI shall be governed by the procedures set forth

in section 2339B. Furthermore, to accommodate the possible presence of a jury or any other individuals that are deemed necessary to such proceedings, the Department will retain discretion to authorize access to CVI for persons necessary for the conduct of enforcement proceedings, provided that no one that the Department has not so authorized shall have access to or be present for the disclosure of such information. This has the effect of requiring a court to close the courtroom where CVI is to be revealed, which the Department believes is consistent with Congress's intent that CVI be treated as classified information. Because the Department believes that Section 550(c) cannot reasonably be read to prohibit a chemical facility and its counsel or other relevant employees from gaining access to CVI concerning their own facility for use in enforcement proceedings, the proposed provisions do not apply to such individuals.

For civil litigation unrelated to the enforcement of Section 550, except as provided otherwise at the sole discretion of the Secretary, access to CVI shall not be available. The Department believes that by carefully drafting Section 550(c), Congress did not envision providing access to CVI to third-parties in civil litigation or in any civil litigation not involving enforcement of Section 550. As discussed above, Section 550(c) requires very restrictive handling of CVI in enforcement proceedings, *i.e.*, handling at least consistent with the handling of classified information. We believe that Congress could not have intended the Department to afford CVI lesser protection in the context of civil litigation, especially where the litigation is unrelated to the enforcement of Section 550. The level of protection for CVI in civil litigation proposed herein is not inconsistent with the regime governing SSI prior to the Homeland Security Appropriations Act of 2007. The Department believes, however, that, in light of amendments to the SSI regime contained in section 525(d) of the Homeland Security Appropriations Act of 2007, to give full effect to Section 550(c), the Department must provide expressly for the prohibition on disclosure of CVI in civil litigation. Among other things, section 525(d) granted civil litigants who do not have a regulatory need to know access to specific SSI in federal district court proceedings, if certain requirements are met. Moreover, the Department believes that the proposed prohibition is consistent with the ordinary handling of classified information in civil proceedings, access to which may be ordered only in a narrow class of cases and under extraordinary circumstances.

The Department seeks comment on whether an alterative to the approach described herein is more desirable. Other alternatives may include handling CVI in proceedings in the same manner as SSI or some other category of sensitive unclassified information, or as classified information under CIPA.

L. Statutory Exemptions

Section 550 exempts from its coverage several categories of facilities. According to the statutory exemptions, the regulations issued under Section 550 will not apply to public water systems (as defined by section 1401 of the Safe Drinking Water Act); water treatment works facilities (as defined by section 212 of the Federal Water Pollution Control Act); any facilities owned or operated by the Departments of Defense and Energy; and any facilities subject to regulation by the Nuclear Regulatory Commission. The regulations promulgated under Section 550 also will not apply to maritime facilities regulated by the Coast Guard pursuant to the Maritime Transportation Security Act of 2002. These facilities will not need to submit information to the Department under the Section 550 regulations. The Department, however, is considering how to apply this rule to those facilities that are not subject to the security standards of part 105 of the maritime security regulations but may be covered by other maritime security regulations pursuant to the Maritime Transportation Security Act of 2002. The Department seeks comment on the applicability of this rule to such facilities.

Section 550 also provides that ''[n]othing in this section shall be construed to supersede, amend, alter, or affect any Federal law that regulates the manufacture, distribution in commerce, use, sale, other treatment, or disposal of chemical substances or mixtures.'' ATF regulates the purchase, possession, storage, and transportation of explosives. The Department does not intend for the regulations issued under Section 550 to impede ATF's current authorities. Where there is concurrent jurisdiction, the Department will work closely with ATF to ensure that the regulated entities can comply with the applicable regulations while minimizing any duplicative efforts by such entities.

III. Implementation

A. Immediate Priority on Highest Risk Facilities

The Department is considering a ''phased'' implementation of its Section 550 program. Phase I would begin immediately following promulgation of the interim final rule in April 2007 and would focus on a selected number of chemical facilities identified from data in the RMP program and other sources as potentially posing the most significant risk to neighboring populations. The Assistant Secretary would contact each of these chemical facilities directly and request that each complete the Top-screen process within a reasonable but relatively brief period. Technical assistance with the Top-screen Process would be provided immediately to any chemical facility in this group so that progress could be achieved on an accelerated schedule. Shortly after receipt of the completed Top-screen information, the Assistant Secretary would notify each of these facilities pursuant to proposed § 27.205 (regarding whether it qualifies as ''high risk'' and its initial placement in a risk-based tier). For each high risk, or ''covered,'' facility, the Assistant Secretary would provide a schedule for submission of its Vulnerability Assessment and Site Security Plans under § 27.210 of the proposed regulations. The Department's initial emphasis would be on the highest risk facilities in this group and the Department would prioritize reviews of those chemical facilities by risk, and it would schedule submissions accordingly. Again, the chemical facilities in this Phase 1 group could request and receive technical assistance in completing these processes.

Upon receipt, submissions of Vulnerability Assessments and Site Security Plans for Phase 1 covered facilities would be subject immediately to review under § 27.240 of the proposed regulations, and notified as soon as possible if additional submissions or revisions are necessary and, if not, of the results of such reviews. Again, where consultation or revisions would be necessary to bring the submissions into compliance, the process under §§ 27.215 and 27.225 would be available for that purpose. Following approval of the Vulnerability Assessment and Site Security Plan, the Department would contact the covered facility to arrange for an appropriate schedule for a compliance review inspection and audit.

While Phase 1 is underway, the Assistant Secretary would also initiate a broader Phase 2 process. For Phase 2,

the Assistant Secretary would, under § 27.200 of the proposed regulations, publish criteria identifying an additional group or type of facilities that should complete the Top-screen process. The Assistant Secretary could also contact facilities directly and request completion of the Top-screen under § 27.200 of the proposed regulations as appropriate. Phase 2 would then progress under the proposed regulations under the standard timeframes contemplated by those regulations. When appropriate, the Assistant Secretary would prioritize and could expedite review for a particular covered facility based on risk.

Finally, as Phase 2 is underway, the Assistant Secretary could, as soon as appropriate, initiate a Phase 3 process for other high risk facilities not addressed in Phases 1 and 2. We contemplate that Phase 1 would be completed as soon as possible, and certainly during the first year of the program. Phase 2 would be well underway during year one, but could be completed during the second year. Phase 3 could begin some time later. Of course, every covered facility in each of these 3 proposed program phases would be subject to requirements of §§ 27.215, 27.225, and 27.245 for continuing obligations for plan updates, audits and inspections. Pursuant to § 27.215 and § 27.225 of the proposed rules, the frequency and nature of these continuing requirements would vary for covered facilities based on placement in the risk-based tiers.

If such a phased system is implemented, the Department would issue guidance further describing each phase in additional detail.

The Department requests comment on the viability and practicality of this phasing proposal for the Section 550 program.

B. Consultations and Technical Assistance

As with any new regulatory program, it is very important that the Department ensure a uniform and fair approach in each of the programmatic phases to the many activities described in these regulations. Uniformity could be particularly difficult to achieve as the program matures, as new officers are trained and begin the process of reviewing Vulnerability Assessments and Site Security Plans, and as audits and inspections are conducted. The Department has several structural means to address its concerns about uniformity and fairness. First, at each step of the process, a facility may seek to ''consult'' with Department officials on procedural or policy matters or on the application of the performance standards. Such consultations are addressed in section § 27.115 of the proposed regulations. Second, the Assistant Secretary and a designated Coordinating Official will have a specific responsibility under these regulations to ensure uniformity and fairness by program officials. Third, to the extent that resources permit, the Department will provide technical assistance to covered facilities. As the program matures and further guidance is issued, the level of necessary technical assistance may decline. But in the initial stages of the program, this type of assistance may be very important. The Department recognizes that the initial period of the program implementation will be the most challenging for covered facilities. The Department requests comment on these and other activities that may improve the implementation process. Note also that the proposed regulations also contemplate more formal processes for administrative Objections and Appeals in sections 27.205(c); 27.220(b); 27.240(b), (c); 27.310(c); and 27.320.

IV. Other Issues

A. Third-Party Lawsuits

Section 550 provides that ''nothing in [that] section confers upon any person except the Secretary a right of action against an owner or operator of a chemical facility to enforce any provision of this section.'' Pub. L. 109–295, Sec. 550. Proposed § 27.410 codifies that provision in the regulations. The Department believes that this statutory and regulatory language prohibits any effort by a State or local government or other third party litigant to enforce the provisions of Section 550, or to compel the Department to take a specific action to enforce Section 550. Thus, the Department has discretion to determine when and how to enforce. Note also that Section 550 has strict information protection provisions for the type of security information that would be critical to any enforcement matter: ''That in any proceeding to enforce this section, vulnerability assessments, site security plans, and other information submitted to or obtained by the Secretary under this Section, shall be treated as if the information were classified material.'' Pub. L. 109–295, Sec. 550(c).

B. Application to Facilities Manufacturing and/or Storing Ammonium Nitrate

Section 550 provides authority for the Department to regulate ''chemical facilities'' without restricting that authority to facilities manufacturing or storing any particular type of chemical substance. The Department is aware, however, that some legislative proposals not yet enacted into law contain specific provisions regarding the security measures associated with ammonium nitrate. See H.R. 3197, 109th Cong. (2006), S. 2145, 109th Cong. (2006). The Department currently plans to treat ammonium nitrate chemical facilities in the same manner that it treats facilities with other chemicals: whether the regulations govern a particular ammonium nitrate chemical facility will depend upon the nature of the facility and the risk assessment results. The Department seeks comments, however, on the application of the proposed regulations to ammonium nitrate chemical facilities.

C. Regulatory Requirements/Matters

1. Executive Order 12,866

Executive Order 12,866, Regulatory Planning and Review, requires an assessment of the potential costs and benefits of regulatory actions. When the Department publishes the interim final rule, we will include our analysis of the expected costs of the regulation and an assessment of the benefits of the regulation. Interested persons are invited to provide comment on all aspects of the potential costs and benefits in order to assist the Department with its analysis. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked and submitted in accordance with the procedures explained above in the **ADDRESSES** section. Comments that will provide the most assistance to the Department with this rulemaking include, but are not limited to:

- The economic impact (both long-term and short-term, quantifiable and qualitative) of the implementation of Section 550.
- The monetary and other costs anticipated to be incurred by facility owners and/or operators and any distributional effects on U.S. citizens.
- The benefits of the rulemaking.

In order to help facilitate meaningful public comment, the Department would like to set forth a potential methodology for analyzing the costs of the interim final rule. We have reviewed the methodology used by the Coast Guard to analyze the economic impact of the 33 CFR part 105 Facility Security final rule, and, due to the similarities between the two rules, believe that this methodology has merit and should be considered for application in this rulemaking. The MTSA Facility Security final rule, at 68

FR 60536 (Oct. 22, 2003), estimated the cost of performance standards on several thousand unique facilities. Similarly, the interim final rule will estimate the costs of risk-based performance standards to possibly several thousand unique facilities. The Coast Guard found it impractical to attempt to estimate compliance costs for each individual facility and instead developed costs based on 16 ''model facilities.'' Each of the several thousand facilities was placed into one of the 16 different subgroups for which compliance costs were then estimated. Once the compliance costs for the 16 ''model facilities'' were calculated, estimating the cost of the regulation was relatively straightforward.

For the cost assessment which will accompany the interim final rule, the Department may estimate compliance costs based on the ''model facility'' concept explained above. Even though the interim final rule will utilize risk based performance standards and facilities will have discretion on how to meet the performance objectives, the cost assessment will need to make broad assumptions regarding the percentage of facilities that will choose to implement or continue certain security measures for the purposes of estimating compliance costs. For example, many facility owners and/or operators will choose to build or improve fences, enhance perimeter lighting, and hire additional security guards and we may need to make assumptions on how facilities will choose to implement the security measure in order to calculate an estimated cost. The Department is requesting public comment on how best to group facilities that will need to comply with this interim final rule into ''model facilities'' for cost estimating purposes, and we are especially interested in public comment on the criteria presented below:

- Should the ''model facility'' criteria incorporate risk-based tiering? Compliance costs may differ for a facility according to its risk-based tier.
- Should the ''model facility'' criteria consider the size of the facility? Larger facilities may face higher compliance costs than smaller facilities as larger facilities may need to construct longer fences or hire more guards. For the purpose of facilitating comment, we will assume that facilities with six or more chemical processes or chemicals being stored or used would be considered to be ''larger.''
- Should facilities that are enclosed (i.e., warehouses, enclosed manufacturing sites) be treated as a ''model facility'' for cost estimating purposes?
- Should facilities that might be targeted by criminals for chemical theft or diversion be treated as a ''model facility'' for cost estimating purposes?
- The ''model facility'' estimates are expected to include current market prices of possible security enhancements that facilities may choose to undertake. Possible enhancements include, but are not limited to: Primary and secondary fences, barriers at the gate, perimeter vehicle barrier, perimeter lighting, inside lighting, CCTV system, guards, guards houses, fence line intrusion detection system, handheld radios, staging area for vehicle screenings and enhanced communication systems. The Department is requesting information that will assist with the estimation of these and any other security enhancements. We have placed an estimate of the capital costs of specific security enhancements in the docket in order to facilitate public comment.

2. Regulatory Flexibility Act

DHS has not assessed whether this rule will have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). 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. Under Executive Order 13,272 and the Regulatory Flexibility Act, when an agency publishes a rulemaking without prior notice and opportunity for comment, the Regulatory Flexibility Act requirements do not apply. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we request comment on the economic impact of this rule on small entities.

3. Executive Order 13,132: Federalism

The regulations issued under Section 550 have the potential to affect current or future State laws and regulations. Although few States currently regulate chemical facilities as a means to prevent or mitigate terrorist attacks, the Department plans to consult with State officials, to the extent practicable, prior to promulgating the interim final rule. *See* Exec. Order No. 13,132, 64 FR 43255 (Aug. 10, 1999). The Department also encourages State and local officials to provide comments in response to this advance notice. The Department specifically seeks comment on the interaction of the proposed regulations with existing State and local laws and regulations. As discussed in more detail below, the Department has particular interest in considering the effects of State and local laws and regulations on the security-related purposes of Section 550 and the proposed regulations.

The security of the Nation's chemical facilities is a matter of national and homeland security. Remarks of Secretary Michael Chertoff, March 21, 2006, and Sept. 8, 2006. As such, it is the Federal government, and specifically the Department of Homeland Security, that takes on the lead and coordinating role. Among the primary missions of the Department are the prevention of terrorist attacks within the United States; the reduction of the vulnerability of the United States to terrorism; and the responsibility to ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland. 6 U.S.C. 111. These aims are necessarily national in scope, and the regulations designed to enhance the security of chemical facilities against terrorist attack reflect a considered judgment concerning the Department's core mission. State and local governments may also take on a vital role, particularly as first responders and in other response capacities, but the threat of terrorist attacks, which often involve interstate and international activities, remains a significant national threat.

Federal preemption doctrines are founded on the Supremacy Clause of the U.S. Constitution. U.S. Const. art. VI, cl. 2. The law of preemption recognizes that state laws must give way to Federal statutes and regulatory programs to ensure a unified and coherent national approach in areas where the Federal interests prevail—such as national security. *See Crosby* v. *National Foreign Trade Council*, 530 U.S. 363, 375–76 (2000).

Preemption can be expressly set forth in a statute or regulation, or implied by law. The nature of express preemption depends on the language of the statute or regulation that preempts state law. Express preemption language in prior legislative proposals on chemical security was controversial. Preemption language in certain legislative proposals was criticized as far too narrow, expressly allowing a patchwork of inconsistent or contradictory state or local security regulations that would compromise a uniform effective Federal program. Language in other legislative proposals was criticized as too broad, potentially preempting state regulatory efforts at chemical facilities for

environmental, workplace safety and other non-security purposes.

Ultimately, Section 550 was silent on preemption. Cong. Rec. H7968–69 (daily ed. Sept. 29, 2006) (statement of Chmn. Barton) (''During negotiations it was discussed and consciously decided among the authorizing committee negotiators to not include a provision exempting this section from Federal preemption because we do not want a patchwork of chemical facilities that are trying to secure themselves against threats of terrorism caught in a bind of wondering whether their site security complies with all law.''). Thus, the question of Federal preemption will turn either on the application of implied preemption, or on the nature of any express preemption in the Department's regulations.

The application of implied preemption usually turns on the principle that no state or local authority can frustrate the purposes of a Federal law or regulatory program. In reviewing implied preemption questions, Federal courts typically ask whether the state measure poses an ''obstacle'' to the federal law or regulatory regime, or would ''frustrate the purposes'' of the Federal regulatory program. *See Geier*, 529 U.S. at 873; *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941); *cf. United States* v. *Locke*, 529 U.S. 89 (2000).

Federal preemption questions can arise both in the courts' application of state common law—often state tort law—or in the application of a state statute or state or local regulation, ordinance or similar measure. In a state tort suit, the question may be whether imposing liability for particular activities would be consistent or inconsistent with Federal law or a Federal regulatory program. For instance, how could state tort law impose liability for actions specifically approved under a Federal program? *See Geier* v. *American Honda Motor Co.*, 529 U.S. 861, 882 (2000); *Colacicco* v. *Apotex, Inc.*, 432 F. Supp. 2d 514 (E.D. Pa. 2006). For a state or local regulation, the question will often be whether the state measure would require activity that could interfere with, hinder or frustrate the Federal program. *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 525–26 (1977); *Geier*, 529 U.S. at 873. A state or local regulation may be preempted, for example, where that regulation conflicts with an activity or plan specifically approved under Federal law.

Section 550 preempts State laws and laws of their political subdivisions that conflict with the regulations promulgated thereunder. *See, e.g., Fidelity Fed. Sav. & Loan Ass'n* v. *De la Cuesta*, 458 U.S. 141, 153 (1982) (''Federal regulations have no less pre-emptive effect than federal statutes.''); *id.* at 154 (a ''pre-emptive regulation's force does not depend on express congressional authorization to displace state law'').

In Section 550, Congress created a carefully balanced regulatory relationship between the Federal government and chemical facilities. Section 550 instructs the Department to establish risk-based performance standards for facility security and the statute allows the Department to disapprove any site security plan that does not meet those standards. Pub. L. 109–295, Sec. 550 (''the Secretary may disapprove a site security plan if the plan fails to satisfy the risk-based performance standards established by this section''). But Section 550 also compels the Department to preserve chemical facilities' flexibility to choose security measures to reach the appropriate security outcome. *Id.* (''regulations [issued under this statute] shall permit each such facility, in developing and implementing site security plans, to select layered security measures that, in combination, appropriately address the vulnerability assessment and the risk-based performance standards for security for the facility''). A state measure frustrating this balance will be preempted.

The proposed regulatory text in section 27.405(a) below recognizes this balance and provides that: ''No law or regulation of a State or political subdivision thereof, nor any decision rendered by a court under state law, shall have any effect if such law, regulation, or decision conflicts with, hinders, poses an obstacle to or frustrates the purposes of these regulations or of any approval, disapproval or order issued thereunder.'' The Department is particularly concerned that a conflict or potential conflict between an approved Site Security Plan and state regulatory efforts could create ambiguity that would delay or compromise implementation of security measures at a facility. To avoid any such delays, there may be an immediate need to address potential preemption and clarify application of the law. To meet this need, the proposed regulations, at § 27.405, would permit State or local governments, and/or covered facilities, to seek opinions on preemption from the Department. Such a process has been used by Congress in other contexts, *see, e.g.*, 49 U.S.C. 31141 (review and preemption of State laws and regulations addressing motor vehicle safety). In most cases, the Department would utilize the process to address quickly a specific conflict between a particular application of state law or local law and an approved site security plan or other elements of the Section 550 program. Note that the Department has the authority to make preemption determinations as it administers the chemical security program under Section 550. *See* Brief of the United States as *Amicus Curiae* at 26, *Watters* v. *Wachovia Bank, N.A.*, 2006 WL 3203255, 126 S.Ct. 2900 (2006) (No. 05–1342) (filed Nov. 3, 2006) (''When an agency concludes, in an exercise of delegated *policymaking* authority, that displacement of state law is warranted in furtherance of a federal statute that it is entrusted to administer, the agency is acting within the core of its expertise.'')

4. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals. The Department is currently preparing a regulatory impact analysis, and the Department will seek input from state and local governments that may be impacted by the regulations under Section 550.

5. National Environmental Policy Act

Congress directed the Secretary to issue these interim final regulations no later than six months after the date of enactment of the Fiscal Year 2007 Homeland Security Appropriations Act. Congress also directed that each chemical facility develop and implement site security plans, with the proviso that the facility could select layered security measures to appropriately address the vulnerability assessment and the risk-based performance standards for security of the facility. Additionally, Congress mandated that the Secretary could not disapprove a site security plan based on the presence or absence of a particular security measure, but only on the failure to satisfy a risk-based performance standard. With that statutory direction in mind, the Department reviewed the rulemaking process with regard to the National Environmental Policy Act (NEPA). First and foremost, the Department is not funding or directing a specific action under these regulations, but issuing performance standards. Chemical facilities are of a wide variety of designs and sizes, and are located in a wide range of geographic settings, communities, and natural environments. Consequently, the Department would have no way to determine the action the chemical facility would take in meeting the standard, and what effect that action might have on the environment. Second, even if the Department could predict the actions the facilities would take in response to the standards, it is likely facilities would take widely varying actions to comply, based upon type of facility, geographic location, existing infrastructure, etc. The Department determined that even if appropriate, it could not reasonably accomplish an Environmental Impact Statement within the six months time allotted for issuance of the interim final regulations.

List of Subjects in 6 CFR Part 27

Chemical security, Facilities, Reporting and recordkeeping, Security measures.

Advance Notice

For the reasons set forth in the preamble, the Department of Homeland Security proposes to add Part 27 to Title 6, Code of Federal Regulations, to read as follows:

PART 27—CHEMICAL FACILITY ANTI-TERRORISM STANDARDS

Subpart A—General

Sec.

27.100 Definitions.
27.105 Applicability.
27.110 Implementation.
27.115 Designation of a coordination official; Consultations and technical assistance.
27.120 Severability.

Subpart B—Chemical Facility Security Program

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27.205 Determination that a chemical facility ''Presents A High Level Of Security Risk''.
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27.220 Tiering.
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27.235 Alternative security program.
27.240 Review and approval of vulnerability assessments and site security plans.
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Subpart C—Remedies

27.300 Order for compliance.
27.305 Order assessing civil penalty.
27.310 Order to cease operations.
27.315 Orders generally.
27.320 Appeals.

Subpart D—Other

27.400 Chemical-terrorism vulnerability information.
27.405 Review and preemption of State laws and regulations.
27.410 Third party actions.

Authority: Pub. L. 109–295, sec. 550.

Subpart A—General

§ 27.100 Definitions.

Alternative Security Program or *ASP* shall mean a third-party or industry organization program, a local authority, state or Federal government program or any element or aspect thereof, that the Assistant Secretary has determined is sufficient to serve the purposes of this subchapter.

Assistant Secretary shall mean the Assistant Secretary for Infrastructure Protection, Department of Homeland Security, or any other official identified by the Under Secretary as having authority for a specific action or activity under these regulations.

Chemical Facility or *facility* shall mean any facility that possesses or plans to possess, at any relevant point in time, a quantity of a chemical substance determined by the Secretary to be potentially dangerous or that meets other risk-related criterion identified by the Department. As used herein, the term chemical facility or facility shall also refer to the owner or operator of the chemical facility. Where multiple owners and/or operators function within a common infrastructure or within a single fenced area, the Assistant Secretary may determine that such owners and/or operators constitute a single chemical facility or multiple chemical facilities depending on the circumstances.

Coordinating Official shall mean the person selected by the Assistant Secretary to ensure that the regulations are implemented in a uniform, impartial, and fair manner.

Covered Facility shall mean a chemical facility determined by the Assistant Secretary to present high levels of security risk, or a facility that the Assistant Secretary has determined is presumptively high risk under § 27.200.

Department shall mean the Department of Homeland Security.

General Counsel shall mean the General Counsel of the Department of Homeland Security or his designee.

Operator shall mean a person who has responsibility for the daily operations of a facility or facilities subject to this part.

Owner of a chemical facility shall mean the person or entity that owns any facility subject to this part.

Present high levels of security risk and *high risk* shall refer to a chemical facility that, in the discretion of the Secretary of Homeland Security, presents a high risk of significant adverse consequences for human life or health, national security and/or critical economic assets if subjected to terrorist attack, compromise, infiltration, or exploitation.

Risk-based tier shall mean a system of ''tiers'' differentiating among covered facilities by risk.

Risk profiles shall mean criteria identified by the Assistant Secretary for determining which chemical facilities will complete the ''Top-screen'' process or provide other risk assessment information.

Secretary, or *Secretary of Homeland Security* shall mean the Secretary of the Department of Homeland Security or any person, officer or entity within the Department to whom the Secretary's authority under Section 550 is delegated.

Terrorist attack or *terrorist incident* shall mean any incident or attempt that constitutes terrorism or terrorist activity under 6 U.S.C. 101(15) or 18 U.S.C. 2331(5) or 8 U.S.C. 1182(a)(3)(B)(iii), including any incident or attempt that involves or would involve sabotage of chemical facilities or theft, misappropriation or misuse of a dangerous quantity of chemicals.

Top-screen process shall mean an initial computerized or other screening process identified by the Assistant Secretary through which chemical facilities provide information to the

Department for use pursuant to § 27.200 of these regulations.

Undersecretary shall mean the Undersecretary for Preparedness or any successors to that position within the Department.

§ 27.105 Applicability.

(a) This part applies to chemical facilities and to covered facilities as set out herein.

(b) This part does not apply facilities regulated pursuant to the Maritime Transportation Security Act of 2002, Pub. L. 107–295, as amended; Public Water Systems, as defined by section 1401 of the Safe Drinking Water Act, Pub. L. 93–523, as amended; Treatment Works as defined in section 212 of the Federal Water Pollution Control Act, Pub. L. 92–500, as amended; any facility owned or operated by the Department of Defense or the Department of Energy, or any facility subject to regulation by the Nuclear Regulatory Commission.

§ 27.110 Implementation.

The Assistant Secretary may implement the Section 550 program in a phased manner, selecting certain chemical facilities for expedited initial processes under these regulations and identifying other chemical facilities or types or classes of chemical facilities for other phases of program implementation. The Assistant Secretary has flexibility to designate particular chemical facilities for specific phases of program implementation based on potential risk or any other factor consistent with these rules.

§ 27.115 Designation of a coordinating official; Consultations and technical assistance.

(a) The Assistant Secretary will have responsibility for ensuring that these regulations are implemented in a uniform, impartial and fair manner, and will designate a Coordinating Official for that purpose.

(b) The Coordinating Official and his staff shall be available to consult at any stage in the processes hereunder with a covered facility regarding compliance with this Part and shall, as necessary and to the extent that resources permit, provide technical assistance to an owner or operator who seeks such assistance.

(c) In order to initiate consultations or seek technical assistance, a covered facility may contact the Coordinating Official.

§ 27.120 Severability.

If a court finds this part, or any portion thereof, to have been promulgated without proper authority, the remainder of this Part will remain in full effect.

Subpart B—Chemical Facility Security Program

§ 27.200 Information regarding security risk for a chemical facility.

(a) In order to determine the security risk posed by chemical facilities, the Secretary may, at any time, request information from chemical facilities that may reflect potential vulnerabilities to a terrorist attack or incident, including questions specifically related to the nature of the business and activities conducted at the facility; the names, nature, conditions of storage, quantities, volumes, properties, major customers, major uses, and other pertinent information about specific chemicals or chemicals meeting a specific criteria; the security, safety, and emergency response practices, operations, procedures; information regarding incidents, history, funding, and other information bearing on the effectiveness of the security, safety and emergency response programs, and other information as necessary. The Assistant Secretary may seek such information by contacting chemical facilities individually or by publishing a notice in the **Federal Register** seeking information from chemical facilities who meet specified risk profiles. The Assistant Secretary may request that such facilities complete a Top-screen process through a secure Department Web site or through other means.

(b) If a chemical facility subject to paragraph (a) of this section fails to provide information requested or complete the Top-screen process within a reasonable period, the Assistant Secretary may, after attempting to consult with the facility, reach a preliminary determination, based on the information then available, that the facility presumptively presents a high level of security risk. The Assistant Secretary shall then issue a notice to the entity of this determination and, if necessary, order the facility to provide information or complete the Top-screen process pursuant to these rules. If the facility then fails to do so, it may be subject to penalties pursuant to § 27.305, audit and inspection under § 27.245 or, if appropriate, an order to cease operations under § 27.310.

(c) If the facility completes the Top-screen process and the Department determines that it does not present a high level of security risk under § 27.205, its status as ''presumptively high risk'' will terminate, and the Department will issue a notice to the facility to that effect.

§ 27.205 Determination that a chemical facility ''Presents A High Level Of Security Risk''.

(a) *Initial Determination.* The Assistant Secretary may determine at any time that a chemical facility presents a high level of security risk based on any information available (including any information submitted to the Department under § 27.205(b) of these regulations) that, in the Secretary's discretion, indicates the potential that a terrorist attack involving the facility could result in significant adverse consequences for human life or health, national security or critical economic assets. Upon determining that a facility presents a high level of security risk, the Department shall notify the facility in writing of such determination and may also notify the facility of the Department's preliminary determination of the facility's placement in a risk-based tier.

(b) *Redetermination.* If a covered facility previously determined to present a high level of security risk has materially altered its operations, it may seek a redetermination by filing a Request for Redetermination with the Assistant Secretary, and may request a meeting regarding the Request. Within 45 calendar days of receipt of such a Request, or within 45 calendar days of a meeting under this paragraph, the Assistant Secretary shall notify the covered facility in writing of the Department's decision on the Request for Redetermination.

(c) *Objection.*

(1) Within 20 calendar days of an Initial Determination or within 20 calendar days of a denial of a Request for Redetermination, the covered facility may file an Objection to an initial determination under paragraph (a) of this section or a redetermination under paragraph (b) of this section with the Assistant Secretary. The Objection should include the name, mailing address, phone number, and email address of the owner/operator of the facility who is filing the Objection and the address of the covered facility which has been deemed to present a high level of security risk. The Objection should indicate the reasons that the covered facility does not present a high level of security risk. The covered facility may request a meeting with the Assistant Secretary, which shall be scheduled within 20 calendar days of the date that the Assistant Secretary receives the Objection. Within 20 calendar days of the filing of an Objection, or if a meeting is requested under this subsection within 20 calendar days of such meeting, the Assistant Secretary shall notify the covered facility in writing of

a final determination whether the facility presents a high level of security risk.

(2) The Assistant Secretary shall issue appropriate guidance and any necessary forms for an Objection or Request for Redetermination covered by this subsection and procedures for notifications made or meetings conducted under this subsection. If additional information from a covered facility is necessary for the Department to address an Objection or Request for Redetermination, the Assistant Secretary may request such information and, in his discretion, toll the running of the timeframes hereunder pending receipt of such information.

(3) Neither an Objection nor a Request for Redetermination shall toll any applicable timeline for a facility to file a Vulnerability Assessment or Site Security Plan, but the Assistant Secretary may extend applicable deadlines pending resolution of an Objection or Request whenever he deems such an extension appropriate.

(4) Failure to file an Objection in accordance with the procedures and time limits contained in this section results in the determination in paragraph (a) of this section or the redetermination in paragraph (b) of this section becoming final agency action.

(5) Any decision made by the Assistant Secretary under paragraph (c)(1) of this section constitutes final agency action for determining whether a chemical facility presents a high level of risk.

§ 27.210 Submissions schedule.

(a) *Vulnerability Assessment and Site Security Plan.* At the time a covered facility is notified of a determination that it is a high risk chemical facility under § 27.205, the Assistant Secretary shall notify the covered facility of its deadlines for completion and submission of a Vulnerability Assessment and Site Security Plan. The presumptive period for filing a Vulnerability Assessment with the Department shall be 60 calendar days from the date of such notification, and 120 calendar days for development and submission of a Site Security Plan. Upon request of the covered facility, the Assistant Secretary may shorten or extend these time periods based on the complexity of the facility, the nature of the covered facility vulnerabilities, the level and immediacy of security risk or for other reasons.

(b) *Alternative Schedules.* For covered facilities under an ASP or for whom the Assistant Secretary accepts, in whole or part, a preexisting assessment of vulnerabilities, or which present other special circumstances, the Assistant Secretary may set an alternative schedule for submissions.

(c) The Assistant Secretary may provide technical assistance to any covered facility in completing the Vulnerability Assessment or Site Security Plan.

§ 27.215 Vulnerability assessments.

(a) *Initial Assessment.* If the Assistant Secretary determines that a chemical facility is high-risk, the facility must complete a Vulnerability Assessment. A Vulnerability Assessment shall include:

(1) Asset Characterization, including identification of potential critical assets; identification of hazards and consequences of concern for the facility and its surroundings and supporting infrastructure, and identification of existing layers of protection;

(2) Threat Assessment, including a description of possible internal threats, external threats, and internally-assisted threats;

(3) Vulnerability Analysis, including the identification of potential vulnerabilities and the identification of existing countermeasures and their level of effectiveness in reducing those vulnerabilities;

(4) Risk Assessment, including a determination of the relative degree of risk to the facility in terms of the expected effect on each critical asset and the likelihood of a successful attack; and

(5) Countermeasures Analysis, including strategies that reduce the probability of a successful attack, strategies that enhance the degree of risk reduction, the reliability and maintainability of the options, the capabilities and effectiveness of mitigation options, and the feasibility of the options.

(b) The Assistant Secretary may require such a covered facility to complete the assessment using an appropriate methodology identified or issued by the Assistant Secretary or through other means and may issue guidance and provide technical assistance regarding such process or methodology. The Assistant Secretary may accept Vulnerability Assessments, in whole or in part, in any sufficient form or format (either pursuant to a general ASP approval or for a particular facility) so long as the vulnerabilities of the covered facility are, in the Assistant Secretary's discretion, sufficiently assessed. The Assistant Secretary may, at his discretion, accept an existing covered facility's Vulnerability Assessment, subject to any necessary revisions or supplements.

(c) *Updates and Revisions.* (1) A covered facility must update, revise or otherwise alter its Vulnerability Assessment to account for new or differing modes of potential terrorist attack or for other security-related reasons, if requested by the Assistant Secretary.

(2) The Assistant Secretary may require that covered facilities periodically review and update risk assessments in accordance with a risk assessment methodology specified or developed by the Department. The Assistant Secretary shall set, and covered facilities shall comply with, a schedule for any such reviews or updates taking into account the dates of the original submissions of Vulnerability Assessments, the risk-based tier(s) of the covered facilities at issue, and other factors bearing on covered facilities' vulnerabilities. These schedules will be mailed either to individual facilities or published as a Notice in the **Federal Register**.

(3) If not otherwise addressed in a schedule for updates, the covered facility must notify the Department of material modifications to the Vulnerability Assessment by submitting a copy of the revised Vulnerability Assessment. If the revision will result in a disapproval of the Vulnerability Assessment, the Department will notify the facility within 30 days of receipt of the revised assessment. It is presumed that material modifications will not result in a disapproval of the Vulnerability Assessment.

§ 27.220 Tiering.

(a) Confirmation or Alteration of Risk-Based Tiering: Following review of a covered facility's Vulnerability Assessment, the Assistant Secretary shall notify the covered facility of its placement within a risk-based tier, or for covered facilities previously notified of a preliminary tiering, confirm or alter such tiering. The Assistant Secretary may provide the facility with guidance regarding the risk-based performance standards and any other necessary guidance materials applicable to its assigned tier.

(b) Objection to Risk-Based Tiering:

(1) A covered facility may contest its placement in a risk-based tier by submitting an Objection to the Assistant Secretary within 20 days of notification under paragraph (a) of this section. The Objection should include the name, mailing address, phone number, and e-mail address of the owner/operator of the covered facility who is filing the Objection and the address of the chemical facility which has been placed in a risk-based tier. The Objection

should indicate the reasons that the covered facility is not in the appropriate risk-based tier. The covered facility may request a meeting with the Assistant Secretary, which shall be scheduled within 20 calendar days of the date that the Assistant Secretary receives the Objection. Within 20 calendar days of the filing of an Objection, or if a meeting is requested under this paragraph within 20 calendar days of such meeting, the Assistant Secretary shall notify the covered facility in writing of a final determination as to the appropriate tier.

(2) The Assistant Secretary may issue appropriate guidance and any necessary forms for such an Objection and procedures for notifications made or meetings conducted under this subsection. If additional information from a covered facility is necessary for the Department to address an Objection, the Assistant Secretary may request such information and toll the running of the timeframes hereunder pending receipt of such information.

(3) An Objection shall not toll any applicable timeline for a covered facility to file a Vulnerability Assessment or Site Security Plan, but the Assistant Secretary may extend applicable deadlines pending resolution of the Objection whenever he deems such an extension appropriate.

(4) Failure to file an Objection in accordance with the procedures and time limits contained in this section results in the determination in paragraph (a) of this section becoming final agency action.

(5) Any decision made by the Assistant Secretary under paragraph (b)(1) of this section constitutes final agency action for tiering.

§ 27.225 Site security plans.

(a) Covered facilities shall submit a Site Security Plan as directed by the Assistant Secretary. The Site Security Plan must meet the following standards:

(1) Address each vulnerability identified in the facility's Vulnerability Assessment and identify and describe the security measures to address each such vulnerability;

(2) Identify and describe how security measures selected by the facility will address the applicable risk-based performance standards and potential modes of terrorist attack including, as applicable, vehicle-borne explosive devices, water borne explosive devices, ground assault, or other modes of potential modes identified by the Department;

(3) Identify and describe how security measures selected and utilized by the facility will address each applicable performance standard for the appropriate risk-based tier for the facility; and

(4) Specify other information the Assistant Secretary deems necessary regarding chemical facility security.

(b) *Updates and Revisions.*

(1) When a covered facility updates, revises or otherwise alters its Vulnerability Assessment pursuant to § 27.215(b), the covered facility shall make corresponding changes to its Site Security Plan.

(2) The Assistant Secretary may also require that covered facilities periodically review and update Site Security Plans taking into account the dates of the original submission of the Site Security Plan, the risk-based tier(s) of the covered facility at issue, and other factors as determined by the Assistant Secretary. The Assistant Secretary shall set, and covered facilities shall comply with, a schedule for any such reviews or updates. These schedules will be mailed either to individual facilities or published as a Notice in the **Federal Register**.

(3) If not otherwise addressed in a schedule for updates, the covered facility must notify the Department of material modifications to the Site Security Plan by submitting a copy of the revised Site Security Plan. If the revision will result in a disapproval of the Site Security Plan, the Department will notify the facility within 30 days of receipt of the revised plan. It is presumed that material modifications will not result in a disapproval of the Site Security Plan.

§ 27.230 Risk-based performance standards.

(a) Covered facilities must satisfy the performance standards identified in this section. The Assistant Secretary will issue guidance on the application of these standards to risk-based tiers of covered facilities. Each covered facility must select, develop, and implement measures designed to:

(1) Secure and monitor the perimeter of the facility;

(2) Secure and monitor restricted areas or potentially critical targets within the facility;

(3) Control access to the facility and to restricted areas within the facility by screening and/or inspecting individuals and vehicles as they enter, including,

(i) Measures to deter the unauthorized introduction of dangerous substances and devices that may facilitate an attack or actions having serious negative consequences for the population surrounding the facility; and

(ii) Measures implementing a regularly updated identification system that checks the identification of facility personnel and other persons seeking access to the facility and that discourages abuse through established disciplinary measures;

(4) Deter vehicles from penetrating the facility perimeter, gaining unauthorized access to restricted areas or otherwise presenting a hazard to potentially critical targets;

(5) Secure and monitor the shipping and receipt of hazardous materials for the facility;

(6) Deter theft or diversion of potentially dangerous chemicals;

(7) Deter insider sabotage;

(8) Deter cyber sabotage, including by preventing unauthorized onsite or remote access to critical process controls, Supervisory Control And Data Acquisition (SCADA) systems, and other sensitive computerized systems;

(9) Develop and exercise an emergency plan to respond to security incidents internally and with assistance of local law enforcement and first responders;

(10) Maintain effective monitoring, communications and warning systems, including

(i) Measures designed to ensure that security systems and equipment are in good working order and inspected, tested, calibrated, and otherwise maintained;

(ii) Measures designed to regularly test security systems, note deficiencies, correct for detected deficiencies, and record results so that they are available for inspection by the Department; and

(iii) Measures to allow the facility to promptly identify and respond to security system and equipment failures or malfunctions;

(11) Ensure proper security training, exercises, and drills of facility personnel;

(12) Perform appropriate background checks on and ensure appropriate credentials for facility personnel, and as appropriate, for unescorted visitors with access to restricted areas or potentially critical targets;

(13) Escalate the level of protective measures for periods of elevated threat;

(14) Address specific threats, vulnerabilities or risks identified by the Assistant Secretary for the particular facility at issue;

(15) Report significant security incidents to the Department;

(16) Identify, investigate, report, and maintain records of significant security incidents and suspicious activities in or near the site;

(17) Establish official(s) and an organization responsible for security and for compliance with these standards;

(18) Maintain appropriate records; and

(19) Address specific threats, vulnerabilities or risks identified by the Assistant Secretary for the particular facility at issue;

(20) Address any additional performance standards the Assistant Secretary may specify.

§ 27.235 Alternative security program.

The Assistant Secretary may approve in whole, in part, or subject to revisions or supplements, an Alternative Security Program (ASP) for covered facilities required to have Vulnerability Assessments and Site Security Plans under this part upon a determination by the Assistant Secretary that the Alternative Security Program meets the requirements of this part.

§ 27.240 Review and approval of vulnerability assessments and site security plans.

(a) *Review and Approval.*

(1) Covered facilities must provide Vulnerability Assessments and Site Security Plans to the Department:

(i) Within the time period that the Department specifies in schedule that it provides to the facility, or

(ii) If no schedule is provided to a particular facility, within the time period specified by Notice in the **Federal Register**.

(2) The Department will review and approve or disapprove all Vulnerability Assessments and Site Security Plans, including Alternative Security Plans pursuant to § 27.235, submitted to the Department.

(i) Vulnerability Assessments. The Department will approve all Vulnerability Assessments that satisfy the requirements of § 27.215.

(ii) Site Security Plans. The Department will review Site Security Plans through a two-step process. Upon receipt of Site Security Plan from the covered facility, the Department will review the documentation and make a preliminary determination as to whether it satisfies the requirements of § 27.225. If the Department finds that the requirements are satisfied, the Department will issue a Letter of Authorization to the covered facility. Following issuance of the Letter of Authorization, the Department will inspect the covered facility in accordance with § 27.245 for purposes of determining compliance with the requirements of this part.

(3) The Department will not disapprove a Site Security Plan submitted under this Part based on the presence or absence of a particular security measure. The Department may disapprove a Site Security Plan that fails to satisfy the risk-based performance standards established in § 27.230.

(b) When the Department disapproves a Vulnerability Assessment, a preliminary Site Security Plan issued prior to inspection, or a Site Security Plan following inspection, the Department will provide the facility with a written notification that includes a clear explanation of deficiencies in the Vulnerability Assessment or Site Security Plan. The facility shall then enter further consultations with the Department and resubmit a sufficient Vulnerability Assessment or Site Security Plan by the time specified in the written notification provided by the Department under this section. Alternatively, the facility may file an objection under paragraph (c) of this section.

(c) *Objection to Disapproval of Site Security Plan.*

(1) A covered facility may contest the disapproval of its Site Security Plan by submitting an Objection to Assistant Secretary within 20 days of notification under paragraph (b) of this section. The Objection should include the name, mailing address, phone number, and email address of the owner/operator of the facility who is filing the Objection and the address of the chemical facility which has had its Site Security Plan disapproved. The Objection should indicate the reasons why the facility's Site Security Plan should be approved. The covered facility may request a meeting with the Assistant Secretary, which shall be scheduled within 20 calendar days of the date that the Assistant Secretary receives the Objection. Within 20 calendar days of the filing of an Objection, or if a meeting is requested under this subsection within 20 calendar days of such meeting, the Assistant Secretary shall notify the covered facility in writing of a final determination as to approval of its Site Security Plan.

(2) The Assistant Secretary may issue appropriate guidance and any necessary forms for such an Objection and procedures for notifications made or meetings conducted under this subsection. If additional information from a covered facility is necessary for the Department to address an Objection, the Assistant Secretary may request such information and toll the running of the timeframes hereunder pending receipt of such information.

(3) A covered facility may contest a final determination made under paragraph (c)(1) of this section by filing an appeal pursuant to § 27.320.

§ 27.245 Inspections and audits.

(a) Authority. In order to assess compliance with the requirements of this part, authorized DHS officials may enter, inspect, and audit the property, equipment, operations, and records of covered facilities. Except for the higher-risk tiers of covered facilities, the Department may certify third-party auditors to perform audits and inspections.

(b) Following preliminary approval of a Site Security Plan in accordance with § 27.225, the Department or a certified third-party auditor will inspect the covered facility for purposes of determining compliance with the requirements of this part.

(1) If after the inspection, the Department determines that the requirements of § 27.225 have been met, the Department will issue a Letter of Approval to the covered facility.

(2) If after the inspection, the Department determines that the requirements of § 27.225 have not been met, the Department will proceed as directed by § 27.240(b).

(c) Time and Manner. Authorized DHS officials will conduct audits and inspections at reasonable times and in a reasonable manner. DHS will provide covered facility owners and/or operators with 24-hour advance notice before inspections, except where the Under Secretary or Assistant Secretary determines that an inspection without such notice is warranted by exigent circumstances and approves such inspection.

(d) The Assistant Secretary shall issue guidance identifying appropriate processes for such inspections, and specifying the type and nature of documentation that must be available on site.

§ 27.250 Recordkeeping requirements.

(a) Except as provided in § 27.250(b), the covered facility must keep records of the activities as set out below for at least 3 years and make them available to DHS upon request. The following records must be kept:

(1) Training. For training, the date and location of each session, time of day and duration of session, a description of the training, the name and qualifications of the instructor, and a clear, legible list of attendees to include the attendee signature;

(2) Drills and exercises. For each drill or exercise, the date held, a description of the drill or exercise, a list of participants, a list of equipment (other than personal equipment) tested or employed in the exercise, the name(s) and qualifications of the exercise director, and any best practices or

lessons learned which may improve the Site Security Plan;

(3) Incidents and breaches of security. Date and time of occurrence, location within the facility, a description of the incident or breach, the identity of the individual to whom it was reported, and a description of the response;

(4) Maintenance, calibration, and testing of security equipment. For each occurrence of maintenance, calibration, and testing, record the date and time, name and qualifications of the technician(s) doing the work, and the specific security equipment involved;

(5) Security threats. Date and time of occurrence, how the threat was communicated, who received or identified the threat, a description of the threat, to whom it was reported, and a description of the response;

(6) For each audit of the Site Security Plan or a Vulnerability Assessment, a letter certified by the covered facility stating the date the audit was conducted.

(7) All Letters of Authorization and Approval from the Department, and documentation identifying the results of audits and inspections hereunder.

(b) Vulnerability Assessments, Site Security Plans, and all related correspondence with the Department must be retained for at least 6 years.

(c) Records required by this section may be kept in electronic format. If kept in an electronic format, they must be protected against unauthorized access, deletion, destruction, amendment, and disclosure.

Subpart C—Remedies

§ 27.300 Order for compliance.

(a) Where the Department determines that a chemical facility is in violation of any of the requirements of this part, the Department may issue an Order for Compliance, directing the chemical facility to remedy any instances of noncompliance.

(b) The Order for Compliance shall be signed by the Assistant Secretary, shall be dated, and shall include, at a minimum:

(1) The address of the chemical facility in question;

(2) A listing of the provision(s) that the chemical facility is alleged to have violated;

(3) A statement of facts upon which the alleged violation(s) are based;

(4) A statement, indicating what actions the chemical facility must take to bring its operations into compliance;

(5) The date by which the chemical facility must bring its operations into compliance,

(6) A statement of the chemical facility's right to present written explanations, information, or any materials in answer to the alleged violation(s).

(c) By the compliance date specified in the Order, a representative of the chemical facility shall submit a written response to the Department, explaining how the facility has remedied any instances of noncompliance. A chemical facility may request a consultation meeting with the Assistant Secretary.

§ 27.305 Order assessing civil penalty.

(a) A chemical facility that violates an order issued under § 27.305 is liable to the United States for a civil penalty of not more than $25,000 for each day during which the violation continues.

(b) Where the Department has issued an Order for Compliance under § 27.305, and the chemical facility fails to bring its operations into compliance by the date specified in the Order, the Department may issue an Order Assessing Civil Penalty.

(c) The Order Assessing Civil Penalty shall be signed by the Assistant Secretary, shall be dated, and shall include:

(1) The address of the chemical facility in question;

(2) A listing of the provisions that the chemical facility has violated;

(3) A statement of facts upon which the violation(s) are based;

(4) The amount of civil penalties being assessed against the chemical facility; and

(5) A statement, indicating what actions the chemical facility must take to bring its operations into compliance.

(d) Within 30 calendar days of the date of the Order Assessing Civil Penalty, the chemical facility shall pay the penalty in full or file an Appeal as provided under § 27.320.

§ 27.310 Order to cease operations.

(a) *Generally.* Where the Department has issued an Order for Compliance under § 27.305, and the chemical facility fails to bring its operations into compliance by the date specified in the Order, the Department may initiate proceedings to cease operations at a chemical facility.

(b) *Notice of Intent to Order the Cessation of Operations.* If DHS determines that a chemical facility is not in compliance with the requirements of this part, the Assistant Secretary may issue a Notice of Intent to Order the Cessation of Operations. The Notice shall be signed by the Assistant Secretary, shall be dated, and shall include:

(1) The address of the chemical facility in question;

(2) A clear explanation of the deficiencies in the chemical facility's chemical security program, including, if applicable, any deficiencies in the chemical facility's Vulnerability Assessment and/or Site Security Plan; and

(3) The date, as determined to be appropriate by the Under Secretary under the circumstances, by which the chemical facility must be brought into compliance.

(c) *Response to Notice of Intent to Order the Cessation of Operations.* By the compliance deadline specified in the Notice of Intent to Order the Cessation of Operations, the chemical facility must submit to the Assistant Secretary a written response, which shall include evidence showing that the chemical facility has brought its operations into compliance and an explanation of how the chemical facility has satisfied the deficiencies in its Vulnerability Assessment and Site Security Plan. The chemical facility may request a consultation meeting with the Assistant Secretary.

(d) *Order to Cease Operations.* Where a chemical facility fails to bring its operations into compliance by the date specified in the Notice of Intent to Cease Operations, the Assistant Secretary may issue an Order to Cease Operations. The Order shall be signed by the Assistant Secretary, shall be dated, shall provide a clear explanation of the deficiencies in the chemical facility's chemical security plan, and shall identify a date on which operations must cease. In the absence of an appeal under § 27.320, the Order to Cease Operations will remain in effect until the chemical facility brings its operations into compliance.

§ 27.315 Orders generally.

(a) An Order issued under this subpart shall not constitute final agency action until a chemical facility exhausts all appeals under this subpart or the time for such appeals has lapsed.

(b) An Order issued under this subpart shall be stayed while an appeal under § 27.320 is pending.

(c) The Department may issue appropriate guidance and any necessary forms for the issuance of Orders under this subpart.

§ 27.320 Appeals.

(a) A chemical facility may appeal:

(1) A final determination under § 27.240(c)(1) by submitting an appeal to the Under Secretary;

(2) The decision of the Assistant Secretary to issue an Order For Compliance under § 27.305 or an Order Assessing Civil Penalty under § 27.310 by submitting an appeal to the Under Secretary; and

(3) The decision of the Assistant Secretary to issue an Order to Cease Operations under § 27.315 by submitting an appeal to the Deputy Secretary.

(b) The chemical facility shall file an appeal with the adjudicating official within 30 calendar days of the date the Department makes its final determination or issues an Order. The appeal shall include, at a minimum: the name, mailing address, and contact information of the owner/operator of the chemical facility that is filing the appeal; the address of the chemical facility for which the Department disapproved a Site Security Plan or to which the Department issued an Order; and the reasons why the chemical facility believes the Assistant Secretary's determination made pursuant to § 27.240(c) or order issued pursuant to §§ 27.300, 27.305, or 27.310 should be set aside.

(c) The covered facility may request a consultation meeting with the adjudicating official(s). If requested, the meeting will be scheduled within 30 calendar days of the date that the Department receives the request.

(d) Within 30 calendar days of the filing of an appeal, or if a meeting is requested under this subsection, within 30 days of such a meeting, the adjudicating official shall notify the chemical facility in writing of his decision.

(1) For determinations made pursuant to § 27.240(c), the Under Secretary and General Counsel will be the adjudicating officials and will make a finding that the determination should either be sustained or set aside.

(2) For orders issued pursuant to §§ 27.300 and 27.305, the Under Secretary and General Counsel will be the adjudicating officials, and for orders issued under § 27.310, the Deputy Secretary will be the adjudicating official. The adjudicating official(s) may affirm the order, revoke the order, or suspend the order for a specified period of time, after which the terms of the Order go into effect.

(e) In reviewing the Assistant Secretary's decision to issue an Order under § 27.305, the adjudicating official(s) may, in his discretion, mitigate the civil penalty amount based on the following circumstances: the nature and circumstances of the violation(s); the extent and gravity of the situation; the degree of the facility's culpability; respondent's prior history of offenses; the effect of the penalty on respondent's ability to continue in business; and such other matters as justice may require.

(f) Any decision made by an adjudicating official under paragraph (c) of this section constitutes final agency action.

(g) Failure to file an appeal in accordance with the procedures and time limits contained in this section results in the Assistant Secretary's determination or issuance of an Order becoming final agency action.

(h) The Department may issue appropriate guidance and any necessary forms for appeals and procedures for notifications made or meetings conducted under this paragraph and may, notwithstanding the provisions of this subsection, provide for an immediate or an expedited review appeal with accelerated timeframes for appropriate cause.

(i) If additional information from a covered facility is necessary for the Department to address an appeal, the Under Secretary may request such information and toll the running of the timeframes hereunder pending receipt of such information.

Subpart D—Other

§ 27.400 Chemical-terrorism vulnerability information.

(a) *Applicability.* This section governs the maintenance, safeguarding, and disclosure of information and records that constitute Chemical-terrorism Security and Vulnerability Information (CVI), as defined in paragraph (b) of this section. The Secretary shall administer this Section consistent with section 550, including appropriate sharing with State and local officials, law enforcement officials, and first responders.

(b) *Chemical-terrorism Vulnerability Information.* In accordance with section 550(c) of the Homeland Security Appropriations Act of 2007, the following information shall constitute CVI:

(1) Vulnerability assessments under § 27.215;

(2) Site security plans under § 27.225;

(3) Any documents developed pursuant to § 27.240, relating to the Department's review and approval of vulnerability assessments and security plans;

(4) Alternate security plans under § 27.235;

(5) Documents relating to inspection or audits under § 27.245;

(6) Any records required to be created or retained under § 27.250;

(7) Sensitive portions of orders, notices or letters under §§ 27.300, 27.305, 27.310, and 27.315; and

(8) Information developed pursuant to §§ 27.200 and 27.205.

(9) Any other information that the Secretary, in his discretion, determines warrants the protections set forth in this part.

(c) *Covered Persons.* Persons subject to the requirements of this section are:

(1) Each person who has access to CVI, as specified in section 5 of this part;

(2) Each person receiving CVI in the course of proceedings or litigation under paragraphs (g), (h), and (i) of this section; and

(3) Each person who otherwise receives or gains access to what they know or should reasonably know constitutes CVI.

(d) *Duty to protect information.* A covered person must—

(1) Take reasonable steps to safeguard CVI in that person's possession or control from unauthorized disclosure. When a person is not in physical possession of CVI, the person must store it a secure container, such as a safe;

(2) Disclose, or otherwise provide access to, CVI only to covered persons who have a need to know, unless otherwise authorized in writing by the Secretary of DHS;

(3) Refer requests by other persons for CVI to DHS;

(4) Mark CVI as specified in paragraph (f) of this section;

(5) Dispose of CVI as specified in paragraph (k) of this section;

(6) If a covered person receives a record containing CVI that is not marked as specified in paragraph (f) of this section, the covered person must—

(i) Mark the record as specified in paragraph (f) of this section; and

(ii) Inform the sender of the record that the record must be marked as specified in paragraph (f) of this section.

(7) When a covered person becomes aware that CVI has been released to unauthorized persons, the covered person must promptly inform DHS.

(8) In the case of information that is both CVI and has been designated as critical infrastructure information under section 214 of the Homeland Security Act, any covered person who is a Federal employee in possession of such information must comply with the disclosure restrictions and other requirements applicable to such information under section 214 and any implementing regulations.

(e) *Need to know—In general.*

(1) A person has a need to know CVI in each of the following circumstances:

(i) When the person requires access to specific CVI to carry out chemical facility security activities approved, accepted, funded, recommended, or directed by DHS.

(ii) When the person is in training to carry out chemical facility security activities approved, accepted, funded, recommended, or directed by DHS.

(iii) When the information is necessary for the person to supervise or otherwise manage individuals carrying out chemical facility security activities approved, accepted, funded, recommended, or directed by the DHS.

(iv) When the person needs the information to provide technical or legal advice to a covered person regarding chemical facility security requirements of Federal law.

(v) When the person needs the information to represent a covered person in connection with any judicial or administrative enforcement proceeding regarding those requirements;

(vi) When DHS determines that access is required under sections 27.400(h) or 27.400(i) in the course of a judicial or administrative enforcement proceeding.

(2) *Federal employees, contractors, and grantees.*

(i) A Federal employee has a need to know CVI if access to the information is necessary for performance of the employee's official duties.

(ii) A person acting in the performance of a contract with or grant from DHS has a need to know CVI if access to the information is necessary to performance of the contract or grant.

(3) *Background check.* DHS may make an individual's access to the CVI contingent upon satisfactory completion of a security background check or other procedures and requirements for safeguarding CVI that are satisfactory to DHS.

(i) *Need to know further limited by the DHS.* For some specific CVI, DHS may make a finding that only specific persons or classes of persons have a need to know.

(ii) [Reserved].

(f) *Marking of paper records.*

(1) In the case of paper records containing CVI, a covered person must mark the record by placing the protective marking conspicuously on the top, and the distribution limitation statement on the bottom, of—

(i) The outside of any front and back cover, including a binder cover or folder, if the document has a front and back cover;

(ii) Any title page; and

(iii) Each page of the document.

(2) Protective marking. The protective marking is: CHEMICAL–TERRORISM VULNERABILITY INFORMATION.

(3) Distribution limitation statement. The distribution limitation statement is:

WARNING: This record contains Chemical-terrorism Vulnerability Information that is controlled under 6 CFR 27.400. No part of this record may be disclosed to persons without a ''need to know,'' as defined in 6 CFR 27.400(e), except with the written permission of the Secretary of Homeland Security. Unauthorized release may result in civil penalty or other action. For DHS, public disclosure is governed by 6 CFR 27.400(g).

(4) Other types of records. In the case of non-paper records that contain CVI, including motion picture films, videotape recordings, audio recording, and electronic and magnetic records, a covered person must clearly and conspicuously mark the records with the protective marking and the distribution limitation statement such that the viewer or listener is reasonably likely to see or hear them when obtaining access to the contents of the record.

(g) *Disclosure by DHS—In general.*

(1) Except as otherwise provided in this section, and notwithstanding the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), and other laws, records containing CVI are not available for public inspection or copying, nor does DHS release such records to persons without a need to know.

(2) *Disclosure under the Freedom of Information Act and the Privacy Act.* If a record contains both CVI and information that is not CVI, DHS, on a proper Freedom of Information Act or Privacy Act request, may disclose the record with the CVI redacted, provided the record is not otherwise exempt from disclosure under the Freedom of Information Act or Privacy Act.

(h) *Disclosure in administrative enforcement proceedings.*

(1) DHS may provide CVI to a person governed by section 550 in the context of an administrative enforcement proceeding when, in the sole discretion of DHS, as appropriate, access to the CVI is necessary for the person to prepare a response to allegations contained in a legal enforcement action document issued by DHS.

(2) *Security background check.* Prior to providing CVI to a person under section 27.400(h)(1), DHS may require the individual or, in the case of an entity, the individuals representing the entity, and their counsel, to undergo and satisfy, in the judgment of DHS, a security background check.

(i) *Disclosure in civil or criminal litigation.*

(1) In any judicial enforcement proceeding, whether civil or criminal, the Secretary, in his sole discretion, may, subject to section 27.400(i)(1)(A), authorize access to CVI for persons necessary for the conduct of such proceedings, provided that no other persons not so authorized shall have access to or be present for the disclosure of such information.

(i) Security background check. Prior to providing CVI to a person under paragraph (a) of this section, DHS may require the individual to undergo and satisfy, in the judgment of DHS, a security background check.

(ii) [Reserved].

(2) In any judicial enforcement proceeding, whether civil or criminal, where a person seeks to disclose CVI to a person not authorized to receive it under this part, or where a person not authorized to receive CVI under this part seeks to compel its disclosure through discovery, the United States may make an ex parte application in writing to the court seeking authorization to—

(i) Redact specified items of CVI from documents to be introduced into evidence or made available to the defendant through discovery under the Federal Rules of Civil Procedure;

(ii) Substitute a summary of the information for such CVI; or

(iii) Substitute a statement admitting relevant facts that the CVI would tend to prove.

(3) The court shall grant a request under paragraph (i)(2) of this section if, after in camera review, the court finds that the redacted item, stipulation, or summary is sufficient to allow the defendant to prepare a defense.

(4) If the court enters an order granting a request under paragraph (i)(2) of this section, the entire text of the documents to which the request relates shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(5) If the court enters an order denying a request of the United States under paragraph (b) of this section, the United States may take an immediate, interlocutory appeal of the court's order in accordance with 18 U.S.C. 2339B(f)(4), (5). For purposes of such an appeal, the entire text of the documents to which the request relates, together with any transcripts of arguments made ex parte to the court in connection therewith, shall be maintained under seal and delivered to the appellate court.

(6) Except as provided otherwise at the sole discretion of the Secretary, access to CVI shall not be available in any civil litigation unrelated to the enforcement of section 550.

(7) Taking of trial testimony—

(i) *Objection*—During the examination of a witness in any judicial proceeding, the United States may object to any question or line of inquiry that may

require the witness to disclose CVI not previously found to be admissible.

(ii) *Action by court*—In determining whether a response is admissible, the court shall take precautions to guard against the compromise of any CVI, including—

(A) Permitting the United States to provide the court, ex parte, with a proffer of the witness's response to the question or line of inquiry; and

(B) Requiring the defendant to provide the court with a proffer of the nature of the information that the defendant seeks to elicit.

(iii) *Obligation of defendant*—In any judicial proceeding, it shall be the defendant's obligation to establish the relevance and materiality of any CVI sought to be introduced.

(8) Construction. Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States to protect against the disclosure of classified information, including the invocation of the military and State secrets privilege.

(j) *Consequences of Violation.* Violation of this section is grounds for a civil penalty and other enforcement or corrective action by DHS, and appropriate personnel actions for Federal employees. Corrective action may include issuance of an order requiring retrieval of CVI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

(k) *Destruction of CVI.*

(1) DHS. Subject to the requirements of the Federal Records Act (5 U.S.C. 105), including the duty to preserve records containing documentation of a Federal agency's policies, decisions, and essential transactions, DHS destroys CVI when no longer needed to carry out the agency's function.

(2) Other covered persons.

(A) *In general.* A covered person must destroy CVI completely to preclude recognition or reconstruction of the information when the covered person no longer needs the CVI to carry out security measures.

(B) *Exception.* Section 27.400(k)(2) does not require a State or local government agency to destroy information that the agency is required to preserve under State or local law.

§ 27.405 Review and preemption of State laws and regulations.

(a) No law, regulation, or administrative action of a State or political subdivision thereof, nor any decision or order rendered by a court under state law, shall have any effect if such law, regulation, or decision conflicts with, hinders, poses an obstacle to or frustrates the purposes of these regulations or of any approval, disapproval or order issued thereunder.

(b) State law, regulation or administrative action defined.—For purposes of this section, the phrase ''State law, regulation or administrative action'' means any enacted law, promulgated regulation, ordinance, administrative action, order or decision, or common law standard of a State or any of its political subdivisions.

(c) Submission for review.—Any chemical facility covered by these regulations and any State may petition the Department by submitting a copy of a State law, regulation, or administrative action, or decision or order of a court for decision under this section.

(d) Review and decision.

(1) Review. The Department will review State laws, administrative actions, or decisions or orders of a court under State law and regulations submitted under this section, and will opine whether—

(i) Complying with the State law or regulation and a requirement of this Part is not possible; or

(ii) The application or enforcement of the State law or regulation would present an obstacle to or frustrate the purposes of this Part.

(2) Decision. The Department may issue a written opinion on any question regarding preemption. If the Department determines that a State law or regulation should not be preempted, he may issue a written decision explaining the decision. The Assistant Secretary will notify the petitioner and the Attorney General of the subject State (if such State has not petitioned the Department under this section) of any decision under this section.

§ 27.410 Third party actions.

(a) Nothing in this Part shall confer upon any person except the Secretary a right of action, in law or equity, for any remedy including, but not limited to, injunctions or damages to enforce any provision of this section.

(b) An owner or operator of a chemical facility may petition the Assistant Secretary to provide the Department's view in any litigation involving any issues or matters regarding this Part.

Dated: December 21, 2006.

Michael Chertoff,

Secretary of Homeland Security, Department of Homeland Security.

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

Appendix A

The Department believes that ''risk'' in the context of terrorism is a function of three variables: consequence (or criticality), vulnerability (or the likelihood that an attack will succeed if launched), and threat (or the likelihood that an attack would be launched in the first place). The Department also believes that ''consequence'' is the initial qualifying factor—that is, if a thing is not critical, then there will not be a significant level of risk associated with it. Accordingly, the Department intends to employ a consequence-only ''Top-screen.''

I. Purpose of the Top-Screen Tool

The Top-screen is a basic questionnaire that facilities will be required to complete. It will provide the Department with information to make a preliminary determination as to the level of risk associated with any given facility. The Department will use it to screen facilities in order to eliminate as many as is appropriate from further activity under the regulation, and to prioritize those facilities that are, on preliminary assessment, ''high risk.'' The Department will make the Top-screen available as an on-line tool.

II. Categories of Top-Screen Users

There will be two categories of Top-screen users: providers and submitters. A provider is a qualified individual familiar with the facility in question. This person will complete the screening tool. A submitter is an officer of the corporation (or equivalent) responsible for the facility in question. The submitter will send the completed Top-screen(s) to DHS, and in so doing, will attest to the accuracy of the information provided.

The provider and the submitter may be the same person should a facility owner/operator so choose. The provider will therefore have the option of ''submitting'' the completed Top-screen to DHS or forwarding it to the provider within his or her own organization.

DHS is considering the imposition of a requirement whereby the submitter must satisfy all of the following requirements: be an officer of the corporation, be a citizen of the United States, and be domiciled in the United States. The Department requests comment on this proposed requirement.

III. Top-Screen Questions

The first segment of the Top-screen will focus on gathering identifying information from the facility, such as its name, address, identification numbers, corporate affiliation, and geo-location. During this segment, DHS will obtain essential contact information and will learn of the exact location of facilities.

The first segment of the Top-screen will also seek to gather information on criticality issues. It will ask questions directed at identifying criticality related to the:

- Potential loss of life (and life-changing injuries) on or near the facility;
- Potential loss of the capability to execute a critical mission, not only in defense, but also in governance and in the provision of essential services and utilities.

The second segment of the Top-screen will ask a series of exclusionary questions. For example, DHS will ask whether a facility is

a public water system or a water treatment works facility, covered under MTSA, owned or operated by the Department of Defense or the Department of Energy, and/or licensed by the Nuclear Regulatory Commission. By asking these questions, DHS will be able to quickly ''screen out'' those facilities that are excluded by law from this regulation, yet will still be able to account for those facilities and to know why they are excluded from the regulation.

To address risk to human life, the third segment of the Top-screen will focus on identifying which chemicals are present at facilities. As part of the Top-screen tool, DHS will provide a list of chemicals and threshold quantities (TQ) for each listed chemical. A provider would be able to select (possibly through the use of a pull-down menu) those chemicals that are present (at any time or in the course of a year, depending on the chemical) in quantities equal to or above the stated TQ. Where the facility does not contain any such chemicals, the facility will be presumptively screened out of coverage from the regulation.

This segment will be broken down into several ''pages,'' each of which addresses the security issues associated with specific chemicals and the TQs of those chemicals. In most (but not all) cases, these security issues will parallel the Department of Transportation's classes of hazards.

To address human health and safety consequences, the tool would ask the facility the following types of questions:

- Whether a toxic release worst-case scenario (as identified by the facility under the EPA Risk Management Program) might expose a residential population greater than or equal to 200,000 persons, and if so, whether the distance in such a scenario might exceed 25 miles;
- Whether a flammable release worst-case scenario (as identified by the facility under the EPA Risk Management Program) might expose a residential population greater than or equal to 1,000 persons;
- Whether the facility manufactures or stores explosive materials in sufficient quantities to result in an offsite residential exposed population;
- Whether the facility has any specified chemical weapon or chemical weapon precursors; To address economic impacts, the tool would ask the facility the following types of questions:
- Whether the facility produces products of national economic importance or whose loss could negatively impact multiple economic sectors;
- Whether an attack on the facility could cause collateral physical damage to key transportation assets;

To address mission impacts the tool would ask questions, such as whether the facility:

- Has chemical(s) for which it provides 35% of the U.S. domestic production capacity;
- Is the sole U.S. supplier;
- Produces a chemical or product used in the manufacture of defense weapons;
- Produces a chemical or product supplied to and for use by multiple defense weapons systems contractors;
- Is a major chemical supplier (>35% market share) to DoD for reasons other than defense weapons systems;
- Produces a chemical or product directly to another manufacturer, producer, or distributor for subsequent use in the manufacture of defense weapons systems;
- Serves as a major or sole supplier to a public health, water treatment, or power generation facility;

The Top-screen tool has the ability to calculate populations at risk and other potential consequences based upon factors such as geo-location and type and quantity of chemical without further information from the provider. The Top-screen tool will be part of a sophisticated system that allows the importation of data from the National Geospatial-Intelligence Agency (NGA) and other such data repositories, as well as the importation and use of modeling tools from the National Laboratories System. Accordingly, DHS will calculate consequentiality based upon the data that facilities provide during the Top-screen process.

Appendix B

Background: Risk Analysis and Management for Critical Asset Protection (RAMCAP) Vulnerability Assessment Methodology

Preface

RAMCAP is an overall strategy and methodology to allow for a more consistent and systematic analysis of the terrorist threat and vulnerabilities against the U.S. infrastructure using a risk-based framework. RAMCAP was developed under contract to DHS by the American Society of Mechanical Engineers Innovative Technologies Institute, LLC (ASME).

As indicated, the Department is considering options for a vulnerability assessment tool for its chemical sector security program and invites comments on available options, including the elements of the process described below.

The Department thanks the Center for Chemical Process Safety (CCPS), the American Petroleum Institute (API), and the National Petrochemical & Refiners Association (NPRA) all of whom agreed to make their VA Methodology and other materials available to DHS as a reference to support the effort to produce a methodology that would support the Department's needs.

RAMCAP Vulnerability Assessment Methodology

General

The Risk Analysis and Management for Critical Asset Protection (RAMCAP) approach to risk analysis was developed for the Department to be broadly applicable to all critical infrastructure sectors. RAMCAP can assist with an overall strategy and methodology to allow for a more consistent and systematic analysis of the terrorist threat and vulnerabilities against the U.S. infrastructure using a risk-based framework. Phase 1 of the project developed the overall risk framework while Phase 2 was the further refinement and development of the methodologies at the sector level.

A Sector module includes 2 components—a screening process referred to as a Top-screen, and a vulnerability assessment tool, referred to as the VA.

1. The screening process provides a basis for understanding the critical infrastructures of greatest concern and the magnitude and nature of their significance. The DHS Top-screen to be employed in the implementation of regulations is described in general terms in Appendix A.
2. Vulnerability assessments will provide further vulnerability and consequence information based on several postulated threats of concern.

The threat scenarios to be used for RAMCAP were provided by DHS. The concept is as follows:

1. Each infrastructure would use the same threat scenarios
2. The user would begin by analyzing each of the scenarios on the list. If the facility cannot tolerate or neutralize this threat, or if a higher level of force causes a greater outcome, then the scenario would consider that greater force and analyze it.
3. The facility is not necessarily expected to be able to prevent or protect against the scenario.

This concept provides DHS with the information they require to make decisions about maximum expected consequences for each scenario. In this context, ''threats'' should be viewed as a yardstick employed to ascertain a consistent expression of vulnerability. These ''threats'' should not be seen as either indicative of government knowledge of enemy intent, nor as an expected design basis for security programs.

The RAMCAP methodology produces a relativistic expression of risk.

Objectives

The RAMCAP project creates a set of sector-specific vulnerability assessment tools that are:

- Consistent across sectors
- Appropriate to sector capabilities
- Reflective of asset owner/operator concerns, strengths and weaknesses
- Able to capture those datum points which support DHS information needs

The sector-specific vulnerability assessment tool being developed is:

- Based upon specific metrics, the use of which is repeatable sector to sector; thereby allowing cross-sector comparative risk assessment.
- Designed to employ specific, defined consequence generators (threat scenarios);
- Designed to evaluate:
  - Consequences (impact produced by the defined consequence generator);
  - Vulnerabilities (potential point targets and/or attack vectors, a broadly accepted surrogate for frequency/probability of success of an attack);
  - Countermeasures (including factors in mitigation, deterrent factors, detection factors, delay factors, response capability, and inherent robustness);
  - Actions/countermeasures at different threat levels;
  - Residual security vulnerability (gap analysis).

The purpose for a sector-specific assessment tool is to advance sector organization efforts to:

- Integrate key features of RAMCAP that cover Vulnerability Assessment (including threat and consequence analysis) into existing sector-specific methods, metrics and documentation, or;
- Assist sector organizations in developing new sector-specific Vulnerability Assessment methods, metrics and documentation as appropriate.

Overview of the RAMCAP VA Methodology

The RAMCAP VA process is a risk-based and performance-based methodology. The user can choose different means of accomplishing the general VA method so long as the end result meets the same performance criteria. The overall 5-step approach of the RAMCAP VA methodology is as follows:

Step 1: Asset Characterization

The asset characterization includes analyzing information that describes the technical details of facility assets as required to support the analysis, identifying the potential critical assets, identifying the hazards and consequences of concern for the facility and its surroundings and supporting infrastructure, and identifying existing layers of protection.

Step 2: Threat Assessment

This step involves choosing appropriate threats for the SVA based on a DHS provided sector-level Threat Assessment of the potential threats to the critical infrastructure/key resource (CI/KR) sectors, as well as analysis of how those threats relate to sector vulnerabilities and consequences.

Step 3: Vulnerability Analysis

The vulnerability analysis includes the relative pairing of each target asset and threat to identify potential vulnerabilities related to process security events. This involves the identification of existing countermeasures and their level of effectiveness in reducing those vulnerabilities.

The degree of vulnerability of each valued asset and threat pairing is evaluated by the formulation of security-related scenarios or by an asset protection basis. If certain criteria are met, such as a higher consequence ranking value, then it may be useful to apply a scenario-based approach to conduct the Vulnerability Analysis. It includes the assignment of risk rankings to the security-related scenarios developed. If the asset-based approach is used, the determination of the asset's consequences may be enough to assign a target ranking value and protect via a standard protection set for that target level. In this case, scenarios may not be developed further than the general thought that an adversary is interested in damaging or stealing an asset.

Step 4: Risk Assessment

The risk assessment determines the relative degree of risk to the facility in terms of the expected effect on each critical asset as a function of consequence and probability of occurrence. Using the assets identified during Step 1 (Asset Characterization), the risks are prioritized based on the likelihood of a successful attack. Likelihood is determined by the team after considering the degree of threats assessed under Step 2, and the degree of vulnerability identified under Step 3.

Step 5: Countermeasures Analysis

Since RAMCAP is designed for use in a voluntary program wherein asset owners are only providing certain information to DHS, the asset owner is not required under RAMCAP to make security enhancements. However, within the DHS regulatory structure, the VA will lead directly to the production of a Site Security Plan, which must effectively address the vulnerabilities and risks identified in the VA. Accordingly, once the VA is completed, the team must make suggested recommendations to reduce security risks.

Based on the vulnerabilities identified and the risk that the layers of security are breached, appropriate enhancements to the security countermeasures are recommended. Countermeasure options will be identified to further reduce vulnerability at the facility. These include improved countermeasures that follow the process security doctrines of deter, detect, delay, respond, mitigate and possibly prevent. Some of the factors to be considered are:

- Reduced probability of successful attack
- Degree of risk reduction by the options
- Reliability and maintainability of the options
- Capabilities and effectiveness of mitigation options
- Costs of mitigation options
- Feasibility of the options

The countermeasure options should be re-ranked to evaluate effectiveness, and prioritized to assist management decision making for implementing security program enhancements. The recommendations should be included in a VA report that can be used to communicate the results of the VA to management for appropriate action.

There is a need to follow-up on the recommended enhancements to the security countermeasures so they are properly reviewed, tracked, and managed until they are resolved. Resolution may include adoption of the VA team's recommendations, substitution of other improvements that achieve the same level of risk abatement, or rejection. Rejection of a VA recommendation and related acceptance of residual risk should be based on valid reasons that are well documented.

This VA process is summarized in Figure 1 and illustrated further in the flowcharts that follow in Figures 2a through 2c. Later in this chapter, preparation activities, such as data gathering and forming the VA team are described. Later sections provide details for each step in the RAMCAP VA methodology. These steps and associated tasks are also summarized in Figure 5.

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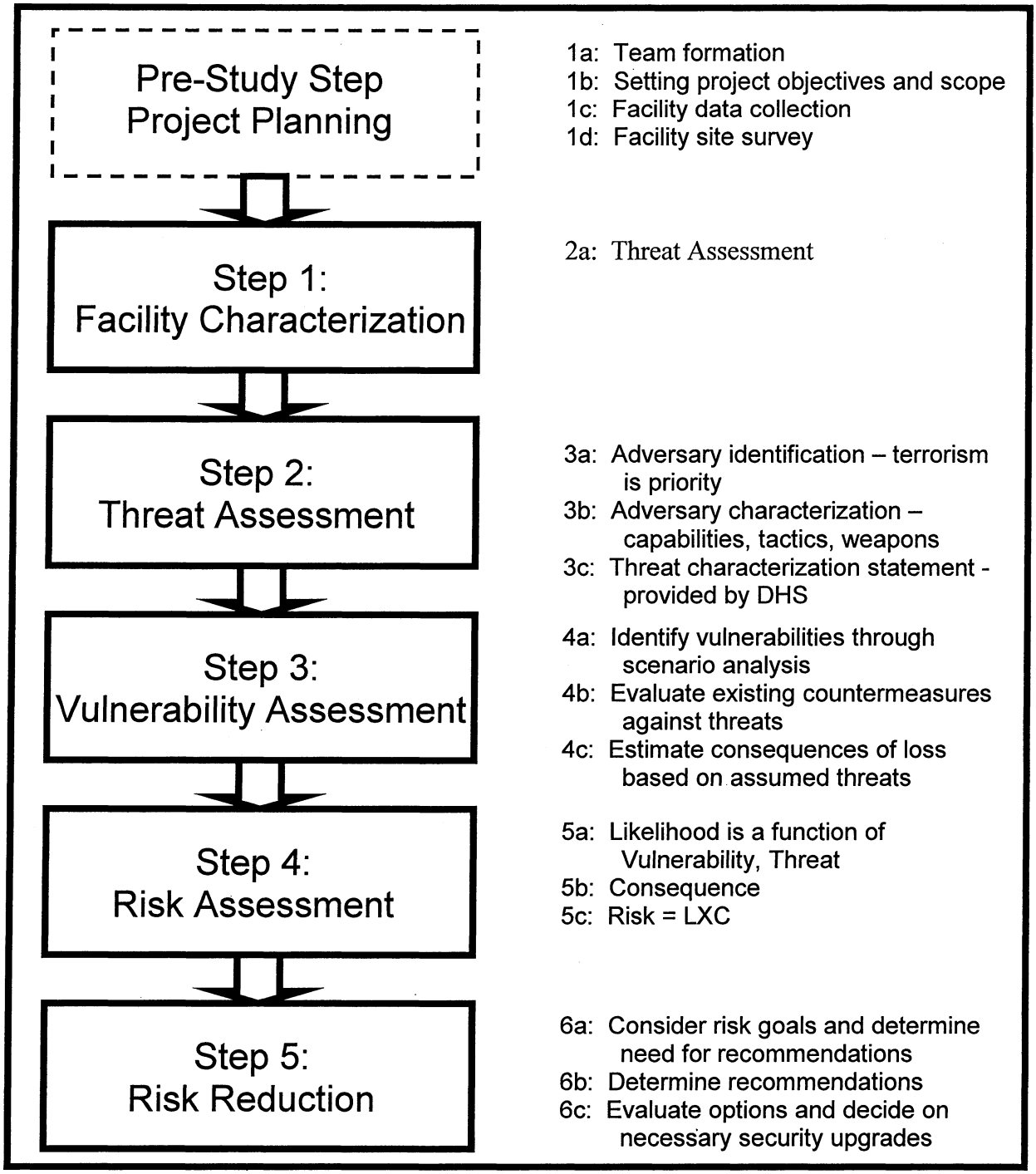
Pre-Study Step
Project Planning
1a: Team formation
1b: Setting project objectives and scope
1c: Facility data collection
1d: Facility site survey
Step 1:
Facility Characterization
2a: Threat Assessment
Step 2:
Threat Assessment
3a: Adversary identification – terrorism is priority
3b: Adversary characterization – capabilities, tactics, weapons
3c: Threat characterization statement - provided by DHS
Step 3:
Vulnerability Assessment
4a: Identify vulnerabilities through scenario analysis
4b: Evaluate existing countermeasures against threats
4c: Estimate consequences of loss based on assumed threats
Step 4:
Risk Assessment
5a: Likelihood is a function of Vulnerability, Threat
5b: Consequence
5c: Risk = LXC
Step 5:
Risk Reduction
6a: Consider risk goals and determine need for recommendations
6b: Determine recommendations
6c: Evaluate options and decide on necessary security upgrades

Figure 2a—RAMCAP Vulnerability Assessment Methodology—Step 1

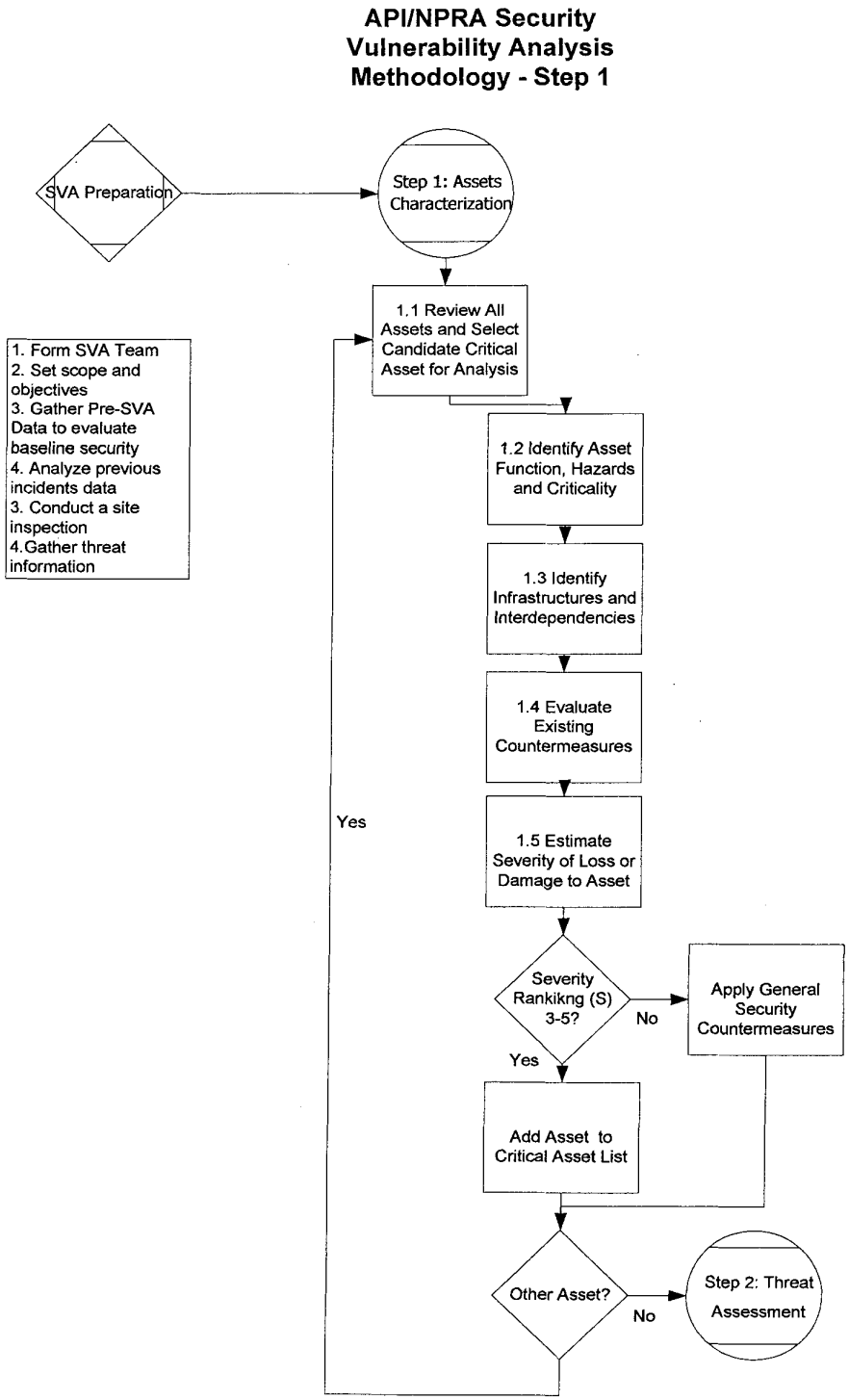

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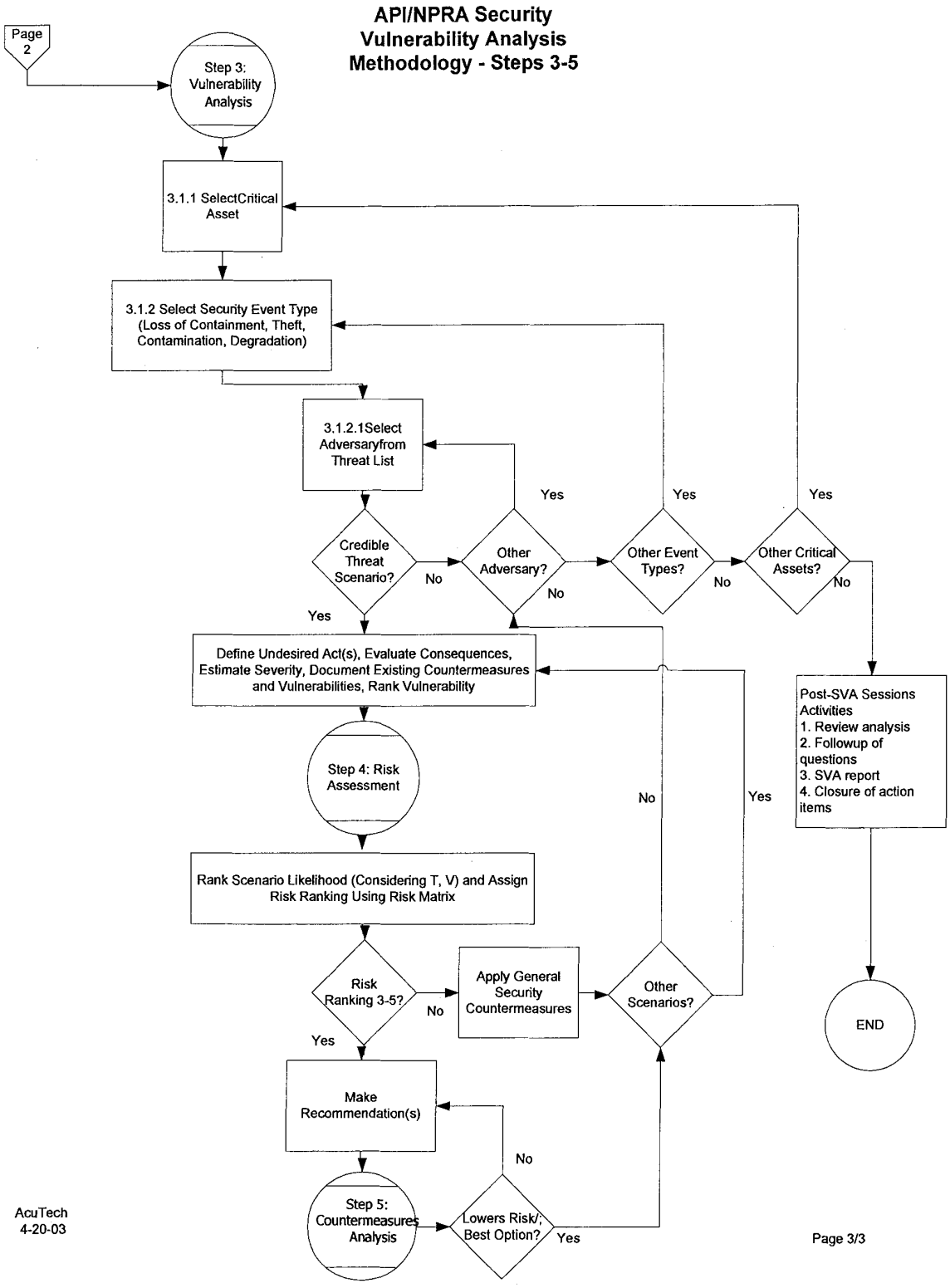
Figure 2b—RAMCAP Vulnerability Assessment Methodology—Step 2

Details of the Threat Assessment portion of the methodology are still being developed.

Figure 2c—RAMCAP Vulnerability Assessment Methodology—Steps 3–5



VA METHODOLOGY

Planning for Conducting an VA

Prior to conducting the VA team-based sessions, there are a number of activities that must be done to ensure an efficient and accurate analysis. There are many factors in successfully completing an VA including the following:

- The activity should be planned in advance;
- Have the full support and authorization by management to proceed;
- The data should be verified and complete;
- The objectives and scope should be concise;
- The team should be knowledgeable of and experienced at the process they are reviewing; and,
- The team leader should be knowledgeable and experienced in the VA process methodology.

All of the above items are controllable during the planning stage prior to conducting the VA sessions. Most important for these activities is the determination of VA-specific objectives and scope, and the selection and preparation of the VA Team.

Prerequisites to conducting the VA include gathering study data, gathering and analyzing threat information, forming a team, training the team on the method to be used, conducting a baseline security survey, and planning the means of documenting the process.

VA Team

The VA approach includes the use of a representative group of company experts plus outside experts if needed to identify potential security related events or conditions, the consequences of these events, and the risk reduction activities for the operator's system. These experts draw on the years of experience, practical knowledge, and observations from knowledgeable field operations and maintenance personnel in understanding where the security risks may reside and what can be done to mitigate or ameliorate them.

Such a company group typically consists of representation from: Company security, risk management, operations, engineering, safety, environmental, regulatory compliance, logistics/distribution, IT and other team members as required. This group of experts should focus on the vulnerabilities that would enhance the effectiveness of the site security plan. The primary goal of this group is to capture and build into the VA method the experience of this diverse group of individual experts so that the VA process will capture and incorporate information that may not be available in typical operator databases.

If the VA will include terrorism attacks on a process handling flammable, explosive, reactive or toxic substances, the VA should be conducted by a team with skills in both the security and process safety areas. This is because the team must evaluate traditional facility security as well as process safety-related vulnerabilities and countermeasures. The final security strategy for protection of the process assets from these events is likely to be a combination of security and process safety strategies.

It is expected that a full time ''core'' team is primarily responsible, and that they are led by a Team Leader. Other part-time team members, interviewees and guests are used as required for efficiency and completeness. At a minimum, VA teams should possess the knowledge and/or skills listed in Figure 3. Other skills that should be considered and included, as appropriate, are included as optional or part-time team membership or as guests and persons interviewed.

The VA Core Team is typically made up of three to five persons, but this is dependent on the number and type of issues to be evaluated and the expertise required to make those judgments. The Team Leader should be knowledgeable and experienced in the VA approach.

VA Objectives and Scope

The VA Team Leader should develop an objectives and scope statement for the VA. This helps to focus the VA and ensure completeness. An example VA objectives statement is shown in Figure 4.

A work plan should then be developed to conduct the VA with a goal of achieving the objectives. The work plan needs to include the scope of the effort, which includes which physical or cyber facilities and issues will be addressed.

Given the current focus on the need to evaluate terrorist threats, the key concerns are the intentional harm to critical infrastructure that may result in catastrophic consequences. For the RAMCAP methodology, the key events and consequences of interest include those described as key security events in the CCPS VA guidelines.[7] In addition to the security events recommended in those guidelines, the RAMCAP VA methodology recommends including injury to personnel and the public directly or indirectly.

Other events may be included in the scope, but it is prudent to address these four primary security events first since these are primarily events involving the processes that make the petroleum industry facilities unique from other facilities.

Figure 3—RAMCAP VA Team Members

The VA Core Team members should have the following skill sets and experience:

- Team Leader – knowledge of and experience with the VA methodology;
- Security representative – knowledge of facility security procedures, methods and systems;
- Safety representative – knowledge of potential process hazards, process safety procedures, methods, and systems of the facility;
- Facility representative - knowledge of the design of the facility under study including asset value, function, criticality, and facility procedures;
- Operations representative – knowledge of the facility process and equipment operation;
- Information Systems/Automation representative (for cyber security assessment) – knowledge of information systems technologies and cyber security provisions; knowledge of process control systems.

The VA Optional/Part-Time Team members may include the following skill sets and experience:

- Security specialist – knowledge of threat assessment, terrorism, weapons, targeting and insurgency/guerilla warfare, or specialized knowledge of detection technologies or other countermeasures available;
- Cyber security specialist – knowledge of cyber security practices and technologies;
- Subject matter experts on various process or operations details such as process technologies, rotating equipment, distributed control systems, electrical systems, access control systems, etc.;
- Process specialist – knowledge of the process design and operations
- Management – knowledge of business management practices, goals, budgets, plans, and other management systems.

Figure 4—VA Sample Objectives Statement

To conduct an analysis to identify security hazards, threats, and vulnerabilities facing a fixed facility handling hazardous materials, and to evaluate the countermeasures to provide for the protection of the public, workers, national interests, the environment, and the company.

Figure 5—RAMCAP VA Methodology, Security Events of Concern

Security Event Type	Candidate Critical Assets
Loss of Containment, Damage, or Injury	Loss of containment of process hydrocarbons or hazardous chemicals on the plant site from intentional damage of equipment or the malicious release of process materials, which may cause multiple casualties, severe damage, and public or environmental impact. Also included is injury to personnel and the public directly or indirectly
Theft	Hydrocarbon, chemical, or information theft or misuse with the intent to cause severe harm at the facility or offsite
Contamination	Contamination or spoilage of plant products or information to cause worker or public harm on or offsite;
Degradation of Assets	Degradation of assets or infrastructure or the business function or value of the facility or the entire company through destructive acts of terrorism.

Data Gathering, Review, and Integration

The objective of this step is to provide a systematic methodology for Owner/Operators to obtain the data needed to manage the security of their facility. Most Owner/Operators will find that many of the data elements suggested here are already being collected. This section provides a systematic review of potentially useful data to support a security plan. However, it should be recognized that all of the data elements in this section are not necessarily applicable to all systems.

The types of data required depend on the types of risks and undesired acts that are anticipated. The operator should consider not only the risks and acts currently suspected in the system, but also consider whether the potential exists for other risks and acts not previously experienced in the system, *e.g.*, bomb blast damage. This section includes lists of many types of data elements. The following discussion is separated into four subsections that address sources of data, identification of data, location of data, and data collection and review.

Annex 1 includes a list of potentially useful data that may be needed to conduct an VA.

Data Sources

The first step in gathering data is to identify the sources of data needed for facility security management.

These sources can be divided into four different classes.

1. Facility and Right of Way Records. Facility and right of way records or experienced personnel are used to identify the location of the facilities. This information is essential for determining areas and other facilities that either may impact or be impacted by the facility being analyzed and for developing the plans for protecting the facility from security risks. This information is also used to develop the potential impact zones and the relationship of such impact zones to various potentially exposed areas surrounding the facility *i.e.*, population centers, and industrial and government facilities.

2. System Information. This information identifies the specific function of the various parts of the process and their importance from a perspective of identifying the security risks and mitigations as well as understanding the alternatives to maintaining the ability of the system to continue operations when a security threat is identified. This information is also important from a perspective of determining those assets and resources available in-house in developing and completing a security plan. Information is also needed on those systems in place, which could support a security plan such as an integrity management program and IT security functions.

3. Operation Records. Operating data are used to identify the products transported and the operations as they may pertain to security issues to facilities and pipeline segments which may be impacted by security risks. This information is also needed to prioritize facilities and pipeline segments for security measures to protect the system, *e.g.*, type of product, facility type and location, and volumes transported. Included in operation records data gathering is the need to obtain incident data to capture historical security events.

4. Outside Support and Regulatory Issues. This information is needed for each facility or pipeline segment to determine the level of outside support that may be needed and can be expected for the security measures to be employed at each facility or pipeline segment. Data are also needed to understand the expectation for security preparedness and coordination from the regulatory bodies at the government, state, and local levels. Data should also be developed on communication and other infrastructure issues as well as sources of information regarding security threats, *e.g.*, ISACs (Information Sharing and Analysis Centers).

Identifying Data Needs

The type and quantity of data to be gathered will depend on the individual facility or pipeline system, the VA methodology selected, and the decisions that are to be made. The data collection approach will follow the VA path determined by the initial expert team assembled to identify the data needed for the first pass at VA. The size of the facility or pipeline system to be evaluated and the resources available may prompt the VA team to begin their work with

an overview or screening assessment of the most critical issues that impact the facility or pipeline system with the intent of highlighting the highest risks. Therefore, the initial data collection effort will only include the limited information necessary to support this VA. As the VA process evolves, the scope of the data collection will be expanded to support more detailed assessment of perceived areas of vulnerability.

Locating Required Data

Operator data and information are available in different forms and format. They may not all be physically stored and updated at one location based on the current use or need for the information. The first step is to make a list of all data required for vulnerability assessment and locate the data. The data and information sources may include:

- Facility plot plans, equipment layouts and area maps
- Process and Instrument Drawings (P&IDs)
- Pipeline alignment drawings
- Existing company standards and security best practices
- Product throughput and product parameters
- Emergency response procedures
- Company personnel interviews
- LEPC (Local Emergency Planning Commission) response plans
- Police agency response plans
- Historical security incident reviews
- Support infrastructure reviews

Data Collection and Review

Every effort should be made to collect good quality data. When data of suspect quality or consistency are encountered, such data should be flagged so that during the assessment process, appropriate confidence interval weightings can be developed to account for these concerns.

In the event that the VA approach needs input data that are not readily available, the operator should flag the absence of information. The VA team can then discuss the necessity and urgency of collecting the missing information.

Analyzing Previous Incidents Data

Any previous security incidents relevant to the vulnerability assessment may provide valuable insights to potential vulnerabilities and trends. These events from the site and, as available, from other historical records and references, should be considered in the analysis. This may include crime statistics, case histories, or intelligence relevant to facility.

Conducting a Site Inspection

Prior to conducting the VA sessions, it is necessary for the team to conduct a site inspection to visualize the facility and to gain valuable insights to the layout, lighting, neighboring area conditions, and other facts that may help understand the facility and identify vulnerabilities. The list of data requirements in Appendix A and the checklist in Appendix B may be referenced for this purpose.

Gathering Threat Information

The team should gather and analyze relevant company and industry and DHS (or other governmental) provided threat information, such as that available from the Energy ISAC, DHS, FBI, or other local law enforcement agency. At a minimum, the DHS-provided Threat Handbook should be thoroughly reviewed by all team members.

STEP 1: ASSETS CHARACTERIZATION

Characterization of the facility is a step whereby the facility assets and hazards are identified, and the potential consequences of damage or theft to those assets is analyzed. The focus is on processes which may contain petroleum or hazardous chemicals and key assets, with an emphasis on possible public impacts. This factor (severity of the consequences) is used to screen the facility assets into those that require only general vs. those that require more specific security countermeasures.

The team produces a list of candidate critical assets that need to be considered in the analysis. Attachment 1—Step 1: Critical Assets/Criticality Form is helpful in developing and documenting the list of critical assets. The assets may be processes, operations, personnel, or any other asset as described in Chapter 3.

Figure 6 below summarizes the key steps and tasks required for Step 1.

Step 1.1—Identify Critical Assets

The VA Team should identify critical assets for the site being studied. The focus is on petroleum or chemical process assets, but any asset may be considered. For example, the process control system may be designated as critical, since protection of it from physical and cyber attack may be important to prevent a catastrophic release or other security event of concern. Assets include the full range of both material and non-material aspects that enable a facility to operate.

FIGURE 6—RAMCAP VA METHODOLOGY, DESCRIPTION OF STEP 1 AND SUBSTEPS

Step	Task
Step 1: Assets Characterization	
1.1 Identify critical assets.	Identify critical assets of the facility including people, equipment, systems, chemicals, products, and information.
1.2 Identify critical functions.	Identify the critical functions of the facility and determine which assets perform or support the critical functions.

FIGURE 6—RAMCAP VA METHODOLOGY, DESCRIPTION OF STEP 1 AND SUBSTEPS—Continued

Step	Task
1.3 Identify critical infrastructures and interdependencies.	Identify the critical internal and external infrastructures and their interdependencies (e.g., electric power, petroleum fuels, natural gas, telecommunications, transportation, water, emergency services, computer systems, air handling systems, fire systems, and SCADA systems) that support the critical operations of each asset.
1.4 Evaluate existing countermeasures.	Identify what protects and supports the critical functions and assets. Identify the relevant layers of existing security systems including physical, cyber, operational, administrative, and business continuity planning, and the process safety systems that protect each asset.
1.5 Evaluate impacts.	Evaluate the hazards and consequences or impacts to the assets and the critical functions of the facility from the disruption, damage, or loss of each of the critical assets or functions.
1.6 Select targets for further analysis.	Develop a target list of critical functions and assets for further study.

FIGURE 7—RAMCAP VA METHODOLOGY, EXAMPLE CANDIDATE CRITICAL ASSETS

Security event type	Candidate critical assets
Loss of Containment, Damage, or Injury.	• Process equipment handling petroleum and hazardous materials including processes, pipelines, storage tanks. • Marine vessels and facilities, pipelines, other transportation systems. • Employees, contractors, visitors in high concentrations.
Theft	• Hydrocarbons or chemicals processed, stored, manufactured, or transported; • Metering stations, process control and inventory management systems. • Critical business information from telecommunications and information management systems including Internet accessible assets.

FIGURE 7—RAMCAP VA METHODOLOGY, EXAMPLE CANDIDATE CRITICAL ASSETS—Continued

Security event type	Candidate critical assets
Contamination	• Raw material, intermediates, catalysts, products, in processes, storage tanks, pipelines. • Critical business or process data.
Degradation of Assets.	• Processes containing petroleum or hazardous chemicals. • Business image and community reputation. • Utilities (Electric Power, Steam, Water, Natural Gas, Specialty Gases). • Telecommunications Systems. • Business systems.

The following information should be reviewed by the VA Team as appropriate for determination of applicability as critical assets:

• Any applicable regulatory lists of highly hazardous chemicals, such as the Clean Air Act 112(r) list of flammable and toxic substances for the EPA Risk Management Program (RMP) 40 CFR Part 68 or the OSHA Process Safety Management (PSM) 29 CFR 1910.119 list of highly hazardous chemicals;

• Inhalation poisons or other chemicals that may be of interest to adversaries.

• Large and small scale chemical weapons precursors as based on the following lists:

— Chemical Weapons Convention list;

— FBI Community Outreach Program (FBI List) for Weapons of Mass Destruction materials and precursors;

— The Australia Group list of chemical and biological weapons

• Material destined for the food, nutrition, cosmetic or pharmaceutical chains;

• Chemicals which are susceptible to reactive chemistry

Owner/Operators may wish to consider other categories of chemicals that may cause losses or injuries that meet the objectives and scope of the analysis. These may include other flammables, critically important substances to the process, explosives, radioactive materials, or other chemicals of concern.

In addition, the following personnel, equipment and information may be determined to be critical:

• Process equipment
• Critical data
• Process control systems
• Personnel
• Critical infrastructure and support utilities

Step 1.2—Identify Critical Functions

The VA Team should identify the critical functions of the facility and determine which assets perform or support the critical functions. For example, the steam power plant of a refinery may be critical since it is the sole source of steam supply to the refinery.

Step 1.3—Identify Critical Infrastructures and Interdependencies

The VA team should identify the critical internal and external infrastructures and their interdependencies (e.g., electric power, petroleum fuels, natural gas, telecommunications, transportation, water, emergency services, computer systems, air handling systems, fire systems, and SCADA systems) that support the critical operations of each asset. For example, the electrical substation may be the sole electrical supply to the plant, or a supplier delivers raw material to the facility via a single pipeline. The Interdependencies and Infrastructure Checklist can be used to identify and analyze these issues. Note that some of these issues may be beyond the control of the owner/operator, but it is necessary to understand the dependencies and interdependencies of the facility, and the result of loss of these systems on the process.

Step 1.4—Evaluate Existing Countermeasures

The VA team identifies and documents the existing security and process safety layers of protection. This may include physical security, cyber security, administrative controls, and other safeguards. During this step the objective is to gather information on the types of strategies used, their design basis, and their completeness and general effectiveness. A pre-VA survey is helpful to gather this information. The data will be made available to the VA team for them to form their opinions on the adequacy of the existing security safeguards during Step 3: Vulnerability Analysis and Step 5: Countermeasures Analysis.

A Countermeasures Survey Form can be used to gather information on the presence and status of existing safeguards or another form may be more suitable. Existing records and documentation on security and process safety systems, as well as on the critical assets themselves, can be referenced rather than repeated in another form of documentation. An example is included in Attachment 1.

The objective of the physical security portion of the survey is to identify measures that protect the entire facility and/or each critical asset of the facility, and to determine the effectiveness of the protection. Annex 2 contains checklists that may be used to conduct the physical security portion of the survey.

Note that the infrastructure interdependencies portion of the survey will identify infrastructures that support the facility and/or its critical assets (e.g., electric power, water, and telecommunications).

Step 1.5—Evaluate Impacts

The Impacts Analysis step includes both the determination of the hazards of the asset being compromised as well as the specific consequences of a loss. The VA team should consider relevant chemical use and hazard information, as well as information about the facility. The intent is to develop a list of target assets that require further analysis partly based on the degree of hazard and consequences. Particular consideration should be given to the hazards of fire, explosion, toxic release, radioactive exposure, and environmental contamination.

The consequences are analyzed to understand their possible significance. The Annex 1—Attachment 1—Step 1: Critical Assets/Criticality Form is useful to document the general consequences for each asset. The consequences may be generally described but consideration should be given to the selection listed in Figure 8. For DHS purposes, an VA will consider the consequences shown in Figure 9.

Figure 8—RAMCAP VA Methodology, Selected Possible Consequences of RAMCAP VA Security Events

Public fatalities or injuries
Site personnel fatalities or injuries
Large-scale disruption to the national economy, public or private operations
Loss of reputation or business viability

Figure 9 **Modified RAMCAP Consequence Parameters**
1. Human Health & Safety Impacts
a. Reported estimated residential population within the distance to the RMP toxic and flammable WCS endpoints (where EPA RMP is applicable)
b. Acute fatalities
c. Acute injuries
d. Theft of chemical weapons precursors/weapons of mass destruction onsite
e. Contamination to final food or pharmaceutical products made onsite
2. Economic Impacts
3. National Security & Government Functionality Impacts
a. Military mission importance
b. Delivery of public health services
c. Contamination/disruption to critical potable water or electrical energy services
4. Psychological Impacts
a. Impact to iconic/symbolic assets
b. High profile and/or symbolic casualties

The consequence analysis is done in a general manner. If the security event involves a toxic or flammable release to the atmosphere, the EPA RMP offsite consequence analysis guidance can be used as a starting point. If it is credible to involve more than the largest single vessel containing the hazardous material in a single incident, the security event may be larger than the typical EPA RMP worst-case analysis.

A risk ranking scale can be used to rank the degree of severity. Figure 10 illustrates a set of consequence definitions based on four categories of events: A. Fatalities and injuries; B. Environmental impacts; C. Property damage; and D. Business interruption. Asset owners may consider using a risk matrix such as this for making individual risk-based decisions for security, particularly if they use the RAMCAP VA methodology as a generalized vulnerability assessment tool.

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Figure 10—RAMCAP VA Methodology, Example Definitions of Consequences of the Event

DESCRIPTION	RANKING
A. Possible for any offsite fatalities from large-scale toxic or flammable release; possible for multiple onsite fatalities B. Major environmental impact onsite and/or offsite (e.g., large-scale toxic contamination of public waterway) C. Over $X property damage D. Very long term (> X years) business interruption/expense; Large-scale disruption to the national economy, public or private operations; Loss of critical data; Loss of reputation or business viability	S5 – Very High
A. Possible for onsite fatalities; possible offsite injuries B. Very large environmental impact onsite and/or large offsite impact C. Between $X – $Y property damage D. Long term (X months – Y years) business interruption/expense	S4 – High
A. No fatalities or injuries anticipated offsite; possible widespread onsite serious injuries B. Environmental impact onsite and/or minor offsite impact C. Between $X -$Y property damage D. Medium term (X months – Y months) business interruption/expense	S3 – Medium
A. Onsite injuries that are not widespread but only in the vicinity of the incident location; No fatalities or injuries anticipated offsite B. Minor environmental impacts to immediate incident site area only C. Between $X – $Y loss property damage D. Short term (up to X months) business interruption/expense	S2 – Low
A. Possible minor injury onsite; No fatalities or injuries anticipated offsite B. No environmental impacts C. Up to $X Property Damage D. Very short term (up to X weeks) business interruption/expense	S1 – Very Low

As part of the RAMCAP program, DHS has been interested in certain consequence and vulnerability information for a limited number of more critical national sites. For reporting this information to DHS, the following ranking process should be used for assessing consequences.

Figure 11
RAMCAP Consequence Ranges

RAMCAP Consequence Criteria	Consequence Categories										
	0	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
Number Of Fatalities	0 - 100	101 - 200	201 – 400	401 - 800	801 - 1,600	1,601 - 3,200	3,201 - 6,400	6,401 - 12,800	12,801 - 25,600	25,601 - 51,200	51,201 - 102,400
Number Of Injuries	0 - 300	501 - 1000	1001 - 2000	2001 - 4000	4001 - 8000	8001 - 16000	16001 - 32000	32001 - 64000	64001 - 128000	128001 - 256000	256001 - 512000
Economic Impacts	<$100M	$100M - $200M	$200M - $400M	$400M - $800M	$800M - $1.6B	$1.6B - $3.2B	$3.2B - $6.4B	$6.4B - $12.8B	$12.8B - $25.6B	$25.6B - $51.2B	$51.2B - $102.4B

The consequences of a security event at a facility are generally expressed in terms of the degree of acute health effects (*e.g.*, fatality, injury), property damage, environmental effects, etc. This definition of consequences is the same as that used for accidental releases, and is appropriate for security-related events. The key difference is that they may involve effects that are more severe than expected with accidental risk. This difference has been considered in the steps of the VA. The economic consequences for RAMCAP include direct replacement costs, business interruption, and the cost of cleanup and restoration.

The VA Team should evaluate the potential consequences of an attack using the judgment of the VA team. If scenarios are done, the specific consequences may be described in scenario worksheets.

Team members skilled and knowledgeable in the process technology should review any off-site consequence analysis data previously developed for safety analysis purposes or prepared for adversarial attack analysis. The consequence analysis data may include a wide range of release scenarios if appropriate.

Proximity to off-site population is a key factor since it is both a major influence on the person(s) selecting a target, and on the person(s) seeking to defend that target.

Step 1.6—Select Targets for Further Analysis

For each asset identified, the criticality of each asset must be understood. This is a function of the value of the asset, the hazards of the asset, and the consequences if the asset was damaged, stolen, or misused. For hazardous chemicals, consideration may include toxic exposure to workers or the community, or potential for the misuse of the chemical to produce a weapon or the physical properties of the chemical to contaminate a public resource.

The VA Team develops a Target Asset List that is a list of the assets associated with the site being studied that are more likely to be targets, based on the complete list of assets and the identified consequences and targeting issues identified in the previous steps. During Step 3: Vulnerability Analysis, the Target Asset List will be generally paired with specific threats and evaluated against the potential types of attack that could occur.

The RAMCAP VA methodology uses ranking systems that are based on a scale of 1–5 where 1 is the lowest value and 5 is the highest value. Based on the consequence ranking and criticality of the asset, the asset is tentatively designated a candidate critical target asset.

STEP 2: THREAT ASSESSMENT

This step involves identifying appropriate threat scenarios for the SVA based on a DHS provided sector-level Threat Assessment that provides an overall assessment of the potential threats to the CI/KR sectors, as well as analysis of how these threats relate to sector vulnerabilities and consequences.

Threat assessment is an important part of a security management system, especially in light of the emergence of international terrorism in the United States. There is a need for understanding the threats facing the industry and any given facility or operation to properly respond to those threats.

A threat assessment is used to evaluate the likelihood of adversary activity against a given asset or group of assets. It supports the establishment and prioritization of security-program requirements, planning, and resource allocations. A threat assessment identifies and evaluates each threat on the basis of various factors, including capability and intent.

The assessment should identify threat categories and potential adversaries, such as insiders, external agents (outsiders), and collusion between insiders and outsiders. The SVA team should consider each type of adversary identified in the threat assessment and their assessed level of capability and motivation.

To be effective, threat assessment must be considered a dynamic process, whereby the threats are continuously evaluated for change. During any given SVA exercise, the threat assessment is referred to for guidance on general or specific threats.

Examples of threats are set forth on the following table (Fig. 12):

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Readers are advised: the RAMCAP postulated threats, developed by and currently in use by industry, are for illustrative purposes only. Certain threats set forth below would not be applicable to the chemical security program at issue.

Figure 12
RAMCAP Postulated Threat Scenarios

Maritime (Boat as weapon)				
1. Delivery	Small boat (pleasure or Zodiac) <10ft draft	Fast Boat <10 ft draft	Barge	Deep draft shipping 20-40 ft draft
Explosive	Explosive charge 400 lbs TNT equivalent	Explosive charge 2000 lbs (TNT equivalent)	Explosive charge -10000 lbs (TNT equivalent)	Explosive charge 40,000 lbs (TNT equivalent) LNG, LPG, weaponized

Land VBIED (w/out assault team)				
2. Single VBIED	Car bomb 400lbs TNT equivalent	Van Bomb 1000lbs TNT equivalent	Mid-size Truck Bomb 10,000lbs TNT equivalent	Large Truck Bomb (18 wheeler) 40,000lbs TNT equivalent

What do they do? Attempt to maximize death/destruction through most productive direct means. For example, aiming at critical assets in hard targets, or clusters of people for open populated areas, or structural supports that would bring down people.

Assault				
Assault force size	1	2-4	5-8	9-16
3. Delivery system **"Land"**	Pedestrian, all-terrain vehicle, motorcycle, over the road personnel transport, cargo truck	All-terrain vehicles, motorcycles, over the road personnel transport, cargo truck	All-terrain vehicles, motorcycles, over the road personnel transport, cargo truck,	All-terrain vehicles, motorcycles, over the road personnel transport, Cargo truck,
4. Delivery system **"Air"**	N/A	1 Helicopter Pilot + 1-3 attack force	2 Helicopters 2 pilots + 4-6 attack force	3 Helicopters 3 pilots + 7-13 attack force
5. Delivery	Lone swimmer	1 x small boat	1 x small boat (Zodiac)	2 x small boat Zodiac

Figure 12
RAMCAP Postulated Threat Scenarios

system **"Water"**		(Zodiac)	(personnel) 1 x small/medium cargo watercraft (equipment)	Medium cargo watercraft (equipment)
Weapons	Pistol, assault rifle, light machine gun	Pistols, assault rifles, sniper rifles (.50 caliber), light machine guns	Pistols, submachine guns, assault rifles, sniper rifles (.50 caliber), light machine guns, rocket propelled grenades (RPG)	Pistols, submachine guns, assault rifles, sniper rifles (.50 caliber), light machine guns, rocket propelled grenades (RPG)
Explosives	Grenades (H.E. & Incendiary) Explosive vest/or satchel.	Grenades (H.E. & Incendiary) Bulk explosives, VBIED (400lb TNT equivalent) for access or attack	Grenades (H.E. & Incendiary) Bulk explosives, VBIED (400lb TNT equivalent) for access or attack Specialized Explosive charges (Breaching charges, shape charges, ballistic discs)	Grenades (H.E. & Incendiary) Bulk explosives, 2 VBIEDs (400lb TNT equivalent) for access or attack Specialized Explosive charges (Breaching charges, shape charges, ballistic discs) Anti-personnel mines
Tools	Minimal breaching tools	Mechanical breaching tools, required hand tools	Mechanical breaching tools, quick saws, chainsaws, sledge hammers, required hand tools	Mechanical breaching tools, quick saws, chainsaws, sledge hammers, required hand tools
Weight per person	65 pounds	65 pounds	65 pounds	65 pounds
What do they do inside? Attempt to maximize death/damage through most productive direct means. For example, in a nuclear plant, they try to achieve sabotage the reactor and breach containment. For the mall, they try to kill as many as possible directly. Assume suicide intent.				
Process Sabotage				
7. Cyber				
8. Insider threat				
9. Unauthorized access				
What do they do? Cause harm through process control systems, though contamination, etc.				
Diversion of sensitive property (theft)				
10. Cyber				
11.Insider threat				
12. Unauthorized access				
What do they do? Steal information, dangerous substances, valuable resources, etc.				

The threat assessment is not based on perfect information and will be developed in the absence of site-specific information on threats. A suggested approach is to make an assumption that international terrorism is possible at every facility.

VA STEP 3: VULNERABILITY ANALYSIS

The Vulnerability Analysis step involves three steps. Once the VA Team has determined how an event can be induced, it should determine how an adversary could make it occur. There are two schools of thought on methodology: the scenario-based approach and the asset-based approach. Both approaches are identical in the beginning, but differ in the degree of detailed analysis of threat scenarios and specific countermeasures applied to a given scenario. The assets are identified, and the consequences are analyzed as per Step 2, for both approaches. Both approaches result in a set of annotated potential targets, and both approaches may be equally successful at evaluating security vulnerabilities and determining required protection.

Figure 13—RAMCAP VA Methodology, Description of Step 3 and Sub-steps

Step	Task
Step 3: Vulnerability Analysis	
3.1 Define scenarios and evaluate specific consequences	Use scenario-analysis and/or use asset-based analysis to document the adversary's potential actions against an asset
3.2 Evaluate effectiveness of existing security measures	Identify the existing measures intended to protect the critical assets and estimate their levels of effectiveness in reducing the vulnerabilities of each asset to each threat or adversary.
3.3 Identify vulnerabilities and estimate degree of vulnerability	Identify the potential vulnerabilities of each critical asset to applicable threats or adversaries. Estimate the degree of vulnerability of each critical asset for each threat-related undesirable event or incident and thus each applicable threat or adversary.

Step 3.1—Define Scenarios and Evaluate Specific Consequences

Each asset in the list of critical target assets from Step 2 is reviewed in light of the threat assessment, and the relevant threats and assets are paired in a matrix or other form of analysis, as shown in Attachment 1—Steps 3–5 RAMCAP VA Methodology—Scenario Based Vulnerability Worksheet/Risk Ranking/Countermeasures Form. The importance of this step is to develop a design basis threat statement for each facility.

Once the VA Team has determined how a malevolent event can be induced, it should determine how an adversary could execute the act.

The action in the Scenario-based approach follow the VA method as outlined in Chapter 3. To establish an understanding of risk, scenarios can be assessed in terms of the severity of consequences and the likelihood of occurrence of security events. These are qualitative analyses based on the judgment and deliberation of knowledgeable team members.

Step 3.2—Evaluate Effectiveness of Existing Security Measures

The VA Team will identify the existing measures intended to protect the critical assets and estimate their levels of effectiveness in reducing the vulnerabilities of each asset to each threat or adversary.

Step 3.3—Identify Vulnerabilities and Estimate Degree of Vulnerability

Vulnerability is any weakness that can be exploited by an adversary to gain unauthorized access and the subsequent destruction or theft of an asset. Vulnerabilities can result from, but are not limited to, weaknesses in current management practices, physical security, or operational security practices.

For each asset, the vulnerability or difficulty of attack is considered using the definitions shown in Figure 14. For RAMCAP purposes, the asset owner also is asked to evaluate the likelihood of successful attack against the prescribed postulated threat scenarios at a minimum using the definitions shown in Figure 15.

The Scenario-based approach is identical to the Asset-based approach in the beginning, but differs in the degree of detailed analysis of threat scenarios. The scenario-based approach uses a more detailed analysis strategy and brainstorms a list of scenarios to understand how the undesired event might be accomplished. The scenario-based approach begins with an onsite inspection and interviews to gather specific information for the VA Team to consider.

The following is a description of the approach and an explanation of the contents of each column of the worksheet in Attachment 1—Steps 3–5 RAMCAP VA Methodology—Scenario Based Vulnerability Worksheet/Risk Ranking/Countermeasures Form.

Figure 14—RAMCAP VA Methodology, Vulnerability Rating Criteria

Vulnerability Level	Description
5 - Very High	Indicates that there are no effective protective measures currently in place to Deter, Detect, Delay, and Respond to the threat and so an adversary would easily be capable of exploiting the critical asset.
4 – High	Indicates there are some protective measures to Deter, Detect, Delay, or Respond to the asset but not a complete or effective application of these security strategies and so it would be relatively easy for the adversary to successfully attack the asset.
3 – Medium	Indicates that although there are some effective protective measures in place to Deter, Detect, Delay, and Respond, there isn't a complete and effective application of these security strategies and so the asset or the existing countermeasures could likely be compromised.
2 – Low	Indicates that there are effective protective measures in place to Deter, Detect, Delay, and Respond, however, at least one weakness exists that an adversary would be capable of exploiting with some effort to evade or defeat the countermeasure given substantial resources.
1 - Very Low	Indicates that multiple layers of effective protective measures to Deter, Detect, Delay, and Respond to the threat exist and the chance that the adversary would be able to exploit the asset is very low.

VULNERABILITY (Likelihood of Adversary Success)	Descriptor	Range	Representative Likelihood	Cat	CONSEQUENCE CATEGORIES										
					0	1	2	3	4	5	6	7	8	9	10
	Adversary is almost certain to succeed	0.5 - 1	> 50/50	5											
	Adversary's chances of success about even	0.25 - 0.5	~1 in 3	4											
	Adversary might succeed - but less than 50/50 chance	0.125 - 0.25	~1 in 5	3											
	Adversary is probably not going to succeed	0.0625 - 0.125	~1 in 10	2											
	Extremely Unlikley	0.0312 - 0.0625	~1 in 20	1											
	Ext Impossible	<0.0312	< 1 in 50	0											
Number Of Fatalities					0 - 100	101 - 200	201 - 400	401 - 800	801 - 1,600	1,601 - 3,200	3,201 - 6,400	6,401 - 12,800	12,801 - 25,600	25,601 - 51,200	51,201 - 102,400
Number Of Injuries					0 - 300	501 - 1000	1001 - 2000	2001 - 4000	4001 - 8000	8001 - 16000	16001 - 32000	32001 - 64000	64001 - 128000	128001 - 256000	256001 - 512000
Economic Impacts					<$100M	$100M - $200M	$200M - $400M	$400M - $800M	$800M - $1.6B	$1.6B - $3.2B	$3.2B - $6.4B	$6.4B - $12.8B	$12.8B - $25.6B	$25.6B - $51.2B	$51.2B - $102.4B

The VA Team devises a scenario based on their perspective of the consequences that may result from undesired security events given a postulated threat for a given asset. This is described as an event sequence including the specific malicious act or cause and the potential consequences, while considering the challenge to the existing countermeasures. It is conservatively assumed that the existing countermeasures are exceeded or fail in order to achieve the most serious consequences, in order to understand the hazard. When considering the risk, the existing countermeasures need to be assessed as to their integrity, reliability, and ability to deter, detect, and delay.

In this column the type of malicious act is recorded. As described earlier, the four types of security events included in the objectives of an VA at a minimum include:

1. Theft/Diversion of material for subsequent use as a weapon or a component of a weapon
2. Causing the deliberate loss of containment of a chemical present at the facility
3. Contamination of a chemical, tampering with a product, or sabotage of a system
4. An act causing degradation of assets, infrastructure, business and/or value of a company or an industry.

Given the information collected in Steps 1–3 regarding the site's key target assets, and the existing layers and rings of protection, a description of the initiating event of a malicious act scenario may be entered into the Undesired Event column. The VA team brainstorms the vulnerabilities based on the information collected in Steps 1–3. The VA team should brainstorm vulnerabilities for all of the malicious act types that are applicable at a minimum. Other scenarios may be developed as appropriate.

Completing the Worksheet

The next step is for the team to evaluate scenarios concerning each asset/threat pairing as appropriate. The fields in the worksheet are completed as follows:

1. Asset: The asset under consideration is documented. The team selects from the targeted list of assets and considers the scenarios for each asset in turn based on priority.
2. Security Event Type: This column is used to describe the general type of malicious act under consideration. At a minimum, the four types of acts previously mentioned should be considered as applicable.
3. Threat Category: The category of adversary including terrorist, activist, disgruntled employee, etc.
4. Type: The type of adversary category whether (I)—Insider, (E)—External, or (C)—Colluded threat.
5. Undesired Act: A description of the sequence of events that would have to occur to breach the existing security measures is described in this column.
6. Consequences: Consequences of the event are analyzed and entered into the Consequence column of the worksheet. The consequences should be conservatively estimated given the intent of the adversary is to maximize their gain. It is recognized that the severity of an individual event may vary considerably, so VA teams are encouraged to understand the expected consequence of a successful attack or security breach.
7. Consequences Ranking: Severity of the Consequences on a scale of 1–5. The severity rankings are assigned based on a conservative assumption of a successful attack.
8. Existing Countermeasures: The existing security countermeasures that relate to detecting, delaying, or deterring the adversaries from exploiting the vulnerabilities may be listed in this column. The countermeasures have to be functional (i.e., not bypassed or removed) and sufficiently maintained as prescribed (i.e., their ongoing integrity can be assumed to be as designed) for credit as a countermeasure.
9. Vulnerability: The specific countermeasures that would need to be circumvented or failed should be identified.
10. Vulnerability Ranking: The degree of vulnerability to the scenario rated on a scale of 1–5.
11. L(ikelihood): The likelihood of the security event is assigned a qualitative ranking in the likelihood column. The likelihood rankings are generally assigned based on the likelihood associated with the entire scenario, assuming that all countermeasures are functioning as designed/intended. Likelihood is a team decision and is assigned from the Likelihood scale based on the factors of Vulnerability and Threat for the particular scenario considered.
12. R(isk): The severity and likelihood rankings are combined in a relational manner to yield a risk ranking. The development of a risk ranking scheme, including the risk ranking values is described in Step 4.
13. New Countermeasures: The recommendations for improved countermeasures that are developed are recorded in the New Countermeasures column.

STEP 4: RISK ANALYSIS/RANKING

In either the Asset-based or the Scenario-based approach to Vulnerability Analysis, the next step is to determine the level of risk of the adversary exploiting the asset given the existing security countermeasures. Figure 16 lists the sub-steps.

The scenarios are risk-ranked by the VA Team based on a simple scale of 1–5. The risk matrix shown in Figure 17 could be used to plot each scenario based on its likelihood and consequences. The intent is to categorize the assets into discrete levels of risk so that appropriate countermeasures can be applied to each situation.

Note: For this matrix, a Risk Ranking of ''5 x 5'' represents the highest severity and highest likelihood possible.

3.7 STEP 5: IDENTIFY COUNTERMEASURES

A Countermeasures Analysis identifies shortfalls between the existing security and the desirable security where additional recommendations may be justified to reduce risk. In assessing the need for additional countermeasures, the team should ensure each scenario has the following countermeasures strategies employed:

- DETER an attack if possible
- DETECT an attack if it occurs
- DELAY the attacker until appropriate authorities can intervene
- RESPOND to neutralize the adversary, to evacuate, shelter in place, call local authorities, control a release, or other actions.

The VA Team evaluates the merits of possible additional countermeasures by listing them and estimating their net effect on the lowering of the likelihood or severity of the attack. The team attempts to lower the risk to the corporate standard.

Figure 16—RAMCAP VA Methodology, Description of Step 4 and Substeps

Step	Task
Step 4: Risk Assessment	
4.1 Estimate risk of successful attack	As a function of consequence and probability of occurrence, determine the relative degree of risk to the facility in terms of the expected effect on each critical asset (a function of the consequences or impacts to the critical functions of the facility from the disruption or loss of the critical asset, as evaluated in Step 1) and the likelihood of a successful attack (a function of the threat or adversary, as evaluated in Step 2, and the degree of vulnerability of the asset, as evaluated in Step 3).
4.2 Prioritize risks	Prioritize the risks based on the relative degrees of risk and the likelihoods of successful attacks.

Figure 17—RAMCAP VA Methodology, Risk Ranking Matrix

SEVERITY						
LIKELIHOOD		5	4	3	2	1
	5	High	High	High	Med	Med
	4	High	High	Med	Med	Low
	3	High	Med	Med	Low	Low
	2	Med	Med	Low	Low	Low
	1	Med	Low	Low	Low	Low

Figure 18—RAMCAP VA Methodology, Description of Step 5 and Substeps

Step	Task
Step 5: Countermeasures Analysis	
5.1 Identify and evaluate enhanced countermeasures options	Identify countermeasures options to further reduce the vulnerabilities and thus the risks while considering such factors as: • Reduced probability of successful attack • The degree of risk reduction provided by the options; • The reliability and maintainability of the options; • The capabilities and effectiveness of these mitigation options; • The costs of the mitigation options; • The feasibility of the options. Rerank to evaluate effectiveness.
5.2 Prioritize potential enhancements	Prioritize the alternatives for implementing the various options and prepare recommendations for decision makers

FOLLOW-UP TO THE VA

The outcome of the VA is:

• the identification of security vulnerabilities;

• a set of recommendations (if necessary) to reduce risk to an acceptable level.

The VA results should include a written report that documents:

• The date of the study;

• The study team members, their roles and expertise and experience;

• A description of the scope and objectives of the study;

• A description of or reference to the VA methodology used for the study;

• The critical assets identified and their hazards and consequences;

• The security vulnerabilities of the facility;

• The existing countermeasures;

• A set of prioritized recommendations to reduce risk;

Once the report is released, it is necessary for a resolution management system to resolve issues in a timely manner and to document the actual resolution of each recommended action.

Attachment 1—Example RAMCAP VA Methodology Forms

The following four forms can be used to document the VA results. Blank forms are provided, along with a sample of how each form is to be completed. Other forms of documentation that meet the intent of the VA guidance can be used.

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Step 1: RAMCAP VA Methodology - Critical Assets/Criticality Form		
Facility Name:		
Critical Assets	**Criticality/Hazards**	**Asset Severity Ranking**
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Step 3-5: RAMCAP VA Methodology – Vulnerability Analysis/Risk Ranking/Countermeasures Form

Facility Name:

Critical Assets:

Security Event Type	Threat Category	Type	Undesired Act	Consequences	S	Existing Countermeasures	Vulnerability	V	L	R	New Countermeasures

Glossary of Terms

Adversary: Any individual, group, organization, or government that conducts activities, or has the intention and capability to conduct activities detrimental to critical assets. An adversary could include intelligence services of host nations, or third party nations, political and terrorist groups, criminals, rogue employees, and private interests. Adversaries can include site insiders, site outsiders, or the two acting in collusion.

Alert levels: Describes a progressive, qualitative measure of the likelihood of terrorist actions, from negligible to imminent, based on government or company intelligence information. Different security measures may be implemented at each alert level based on the level of threat to the facility.

Asset: An asset is any person, environment, facility, material, information, business reputation, or activity that has a positive value to an owner. The asset may have value to an adversary, as well as an owner, although the nature and magnitude of those values may differ. Assets in the VA include the community and the environment surrounding the site.

Asset category: Assets may be categorized in many ways. Among these are:

- People
- Hazardous materials (used or produced)
- Information
- Environment
- Equipment
- Facilities
- Activities/Operations
- Company reputation

Benefit: Amount of expected risk reduction based on the overall effectiveness of countermeasures with respect to the assessed vulnerabilities.

Capability: When assessing the capability of an adversary, two distinct categories need to be considered. The first is the capability to obtain, damage, or destroy the asset. The second is the adversary's capability to use the asset to achieve their objectives once the asset is obtained, damaged, or destroyed.

Checklist: A list of items developed on the basis of past experience that is intended to be used as a guide to assist in applying a standard level of care for the subject activity and to assist in completing the activity in as thorough a manner.

Consequences: The amount of loss or damage that can be expected, or may be expected from a successful attack against an asset. Loss may be monetary but may also include political, morale, operational effectiveness, or other impacts. The impacts of security events which should be considered involve those that are extremely severe. Some examples of relevant consequences in an VA include fatality to member(s) of the public, fatality to company personnel, injuries to member(s) of the public, injuries to company personnel, large-scale disruption to public or private operations, large-scale disruption to company operations, large-scale environmental damage, large-scale financial loss, loss of critical data, and loss of reputation.

Cost: Includes tangible items such as money and equipment as well as the operational costs associated with the implementation of countermeasures. There are also intangible costs such as lost productivity, morale considerations, political embarrassment, and a variety of others. Costs may be borne by the individuals who are affected, the corporations they work for, or they may involve macroeconomic costs to society.

Cost-Benefit analysis: Part of the management decision-making process in which the costs and benefits of each countermeasure alternative are compared and the most appropriate alternative is selected. Costs include the cost of the tangible materials, and also the on-going operational costs associated with the countermeasure implementation.

Countermeasures: An action taken or a physical capability provided whose principal purpose is to reduce or eliminate one or more vulnerabilities. The countermeasure may also affect the threat(s) (intent and/or capability) as well as the asset's value. The cost of a countermeasure may be monetary, but may also include non-monetary costs such as reduced operational effectiveness, adverse publicity, unfavorable working conditions, and political consequences.

Countermeasures analysis: A comparison of the expected effectiveness of the existing countermeasures for a given threat against the level of effectiveness judged to be required in order to determine the need for enhanced security measures.

Cyber security: Protection of critical information systems including hardware, software, infrastructure, and data from loss, corruption, theft, or damage.

Delay: A countermeasures strategy that is intended to provide various barriers to slow the progress of an adversary in penetrating a site to prevent an attack or theft, or in leaving a restricted area to assist in apprehension and prevention of theft.

Detection: A countermeasures strategy that is intended to identify an adversary attempting to commit a security event or other criminal activity in order to provide real-time observation as well as post-incident analysis of the activities and identity of the adversary.

Deterrence: A countermeasures strategy that is intended to prevent or discourage the occurrence of a breach of security by means of fear or doubt. Physical security systems such as warning signs, lights, uniformed guards, cameras, bars are examples of countermeasures that provide deterrence.

Hazard: A situation with the potential for harm.

Intelligence: Information to characterize specific or general threats, including the intent and capabilities of adversaries.

Intent: A course of action that an adversary intends to follow.

Layers of protection: A concept whereby several independent devices, systems, or actions are provided to reduce the likelihood and severity of an undesirable event.

Likelihood of adversary success: The potential for causing a catastrophic event by defeating the countermeasures. LAS is an estimate that the security countermeasures will thwart or withstand the attempted attack, or if the attack will circumvent or exceed the existing security measures. This measure represents a surrogate for the conditional probability of success of the event.

Mitigation: The act of causing a consequence to be less severe.

Physical security: Security systems and architectural features that are intended to improve protection. Examples include fencing, doors, gates, walls, turnstiles, locks, motion detectors, vehicle barriers, and hardened glass.

Process Hazard Analysis (PHA): A hazard evaluation of broad scope that identifies and analyzes the significance of hazardous situations associated with a process or activity.

Response: The act of reacting to detected or actual criminal activity either immediately following detection or post-incident.

Risk: The potential for damage to or loss of an asset. Risk, in the context of process security, is the potential for a catastrophic outcome to be realized. Examples of the catastrophic outcomes that are typically of interest include an intentional release of hazardous materials to the atmosphere, or the theft of hazardous materials that could later be used as weapons, or the contamination of hazardous materials that may later harm the public, or the economic costs of the damage or disruption of a process.

Risk assessment: Risk (R) assessment is the process of determining the likelihood of an adversary (T) successfully exploiting vulnerability (V) and the resulting degree of consequences (C) on an asset. A risk assessment provides the basis for rank ordering of risks and thus establishing priorities for the application of countermeasures.

Safeguard: Any device, system or action that either would likely interrupt the chain of events following an initiating event or that would mitigate the consequences.[4]

Security layers of protection: Also known as concentric ''rings of protection'', a concept of providing multiple independent and overlapping layers of protection in depth. For security purposes, this may include various layers of protection such as counter-surveillance, counterintelligence, physical security, and cyber security.

Security management system checklist: A checklist of desired features used by a facility to protect its assets.

Security plan: A document that describes an owner/operator's plan to address security issues and related events, including security assessment and mitigation options. This includes security alert levels and response measures to security threats.

Vulnerability Assessment (VA): An VA is the process of determining the likelihood of an adversary successfully exploiting vulnerability, and the resulting degree of damage or impact. VAs are not a quantitative risk analysis, but are performed qualitatively using the best judgment of security and safety professionals. The determination of risk (qualitatively) is the desired outcome of the VA, so that it provides the basis for rank ordering of the security-related risks and thus establishing priorities for the application of countermeasures.

Technical Security: Electronic systems for increased protection or for other security

purposes including access control systems, card readers, keypads, electric locks, remote control openers, alarm systems, intrusion detection equipment, annunciating and reporting systems, central stations monitoring, video surveillance equipment, voice communications systems, listening devices, computer security, encryption, data auditing, and scanners.

Terrorism: The FBI defines terrorism as, ''the unlawful use of force or violence against persons or property to intimidate or coerce a Government, the civilian population, or any segment thereof, in furtherance of political or social objectives.''

Threat: Any indication, circumstance, or event with the potential to cause the loss of, or damage to an asset. Threat can also be defined as the intention and capability of an adversary to undertake actions that would be detrimental to critical assets.

Threat categories: Adversaries may be categorized as occurring from three general areas:

- Insiders
- Outsiders
- Insiders working in collusion with outsiders

Undesirable events: An event that results in a loss of an asset, whether it is a loss of capability, life, property, or equipment.

Vulnerabilities: Any weakness that can be exploited by an adversary to gain access to an asset. Vulnerabilities can include but are not limited to building characteristics, equipment properties, personnel behavior, locations of people, equipment and buildings, or operational and personnel practices.

Abbreviations and Acronyms

ACC—American Chemistry Council
AIChE—American Institute of Chemical Engineers
API—American Petroleum Institute
AWCS—Accidental Worst-Case Scenario
C—Consequence
CCPS—Center for Chemical Process Safety of the American Institute of Chemical Engineers (AIChE)
CCTV—Closed Circuit Television
CEPPO—Chemical Emergency Preparedness and Prevention Office (USEPA)
CMP—Crisis Management Plan
CSMS—Chemical Security Management System
CW—Chemical Weapons
CWC—Chemical Weapons Convention
D—Difficulty of Attack
DCS—Distributed Control Systems
DHS—Department of Homeland Security
DOE—Department of Energy
DOT—U.S. Department of Transportation
EHS—Environmental, Health, and Safety
EPA—U.S. Environmental Protection Agency
ERP—Emergency Response Process
EHS—Environmental, Health, and Safety
FBI—U.S. Federal Bureau of Investigation
FC—Facility Characterization
HI—Hazard Identification
HSAS—Homeland Security Advisory System
IPL—Independent Protection Layer
IT—Information Technology
LA—Likelihood of Adversary Attack
LAS—Likelihood of Adversary Success
LOPA—Layer of Protection Analysis
MARSEC—Maritime Security Levels
MOC—Management of Change
NPRA—National Petrochemical and Refiners Association
OSHA—Occupational Safety and Health Administration
PHA—Process Hazard Analysis
PLC—Programmable Logic Controller
PSI—Process Safety Information
PSM—Process Safety Management (Also refers to requirements of 29 CFR 1910.119)
R—Risk
RAMCAP—Risk Analysis and Management for Critical Asset Protection
RMP—Risk Management Process (Also refers to requirements of EPA 40 CFR Part 68)
S—Severity of the Consequences
SOCMA—Synthetic Organic Chemical Manufacturers Association
SOP—Standard Operating Procedure
T—Threat
TSA—Transportation Security Administration
V—Vulnerability
VA—Vulnerability Assessment
WMD—Weapons of Mass Destruction

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ANNEX A — VA Supporting Data Requirements

RAMCAP VA Methodology Supporting Data	
Category*	**Description**
A	Scaled drawings of the overall facility and the surrounding community (e.g., plot plan of facility, area map of community up to worst case scenario radius minimum)
A	Aerial photography of the facility and surrounding community (if available)
A	Information such as general process description, process flow diagrams, or block flow diagrams that describes basic operations of the process including raw materials, feedstocks, intermediates, products, utilities, and waste streams.
A	Information (e.g., drawings that identify physical locations and routing) that describes the infrastructures upon which the facility relies (e.g., electric power, natural gas, petroleum fuels, telecommunications, transportation [road, rail, water, air], water/wastewater)
A	Previous security incident information
A	Description of guard force, physical security measures, electronic security measures, security policies
A	Threat information specific to the company (if available)
B	Specifications and descriptions for security related equipment and systems. Plot plan showing existing security countermeasures
B	RMP information including registration and offsite consequence analysis (if applicable, or similar information)
B	Most up-to-date PHA reports for processes considered targets
B	Emergency response plans and procedures (site, community response, and corporate contingency plans)
B	Information on material physical and hazard properties (MSDS).
B	Crisis management plans and procedures (site and corporate)

B	Complete an VA chemicals checklist to determine whether the site handles any chemicals on the following lists:
C	• EPA Risk Management Program (RMP) 40 CFR Part 68;
C	• OSHA Process Safety Management (PSM) 29 CFR 1910.119;
C	• Chemical Weapons Convention, Schedule 2 and specifically listed Schedule 3 chemicals;
C	• FBI Community Outreach Program (FBI List) for WMD precursors;
C	• The Australia Group list of chemical and biological weapons.
C	Design basis for the processes (as required)
C	Unit plot plans of the processes
C	Process flow diagrams (PFDs) and piping and instrument diagrams (P&IDs) for process streams with hazardous materials
C	Safety systems including fire protection, detection, spill suppression systems
C	Process safety systems including safety instrumented systems (SIS), PLC's, process control systems
C	Operating procedures for start-up, shutdown, and emergency (operators may provide general overview of this information, with written information available as required.
C	Mechanical equipment drawings for critical equipment containing highly hazardous chemicals
C	Electrical one-line diagrams
C	Control system logic diagrams
C	Equipment data information
C	Information on materials of construction and their properties
C	Information on utilities used in the process
C	Test and maintenance procedures for security related equipment and systems

*Categories: A = Documentation to be provided to VA team as much in advance as possible before arrival for familiarization;
B = Documentation to be gathered for use in VA team meetings on site;
C = Documentation that should be readily available on an as-needed basis.

Acknowledgements

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 28, 2006

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html.* Some laws may not yet be available.

H.J. Res. 101/P.L. 109–447

Appointing the day for the convening of the first session of the One Hundred Tenth Congress. (Dec. 22, 2006; 120 Stat. 3327)

S. 214/P.L. 109–448

United States-Mexico Transboundary Aquifer Assessment Act (Dec. 22, 2006; 120 Stat. 3328)

S. 362/P.L. 109–449

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S. 2653/P.L. 109–459

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S. 3546/P.L. 109–462

Dietary Supplement and Nonprescription Drug Consumer Protection Act (Dec. 22, 2006; 120 Stat. 3469)

S. 3821/P.L. 109–463

Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006 (Dec. 22, 2006; 120 Stat. 3477)

S. 4042/P.L. 109–464

To amend title 18, United States Code, to prohibit disruptions of funerals of members or former members of the Armed Forces. (Dec. 22, 2006; 120 Stat. 3480)

S. 4091/P.L. 109–465

Social Security Trust Funds Restoration Act of 2006 (Dec. 22, 2006; 120 Stat. 3482)

S. 4092/P.L. 109–466

To clarify certain land use in Jefferson County, Colorado. (Dec. 22, 2006; 120 Stat. 3484)

S. 4093/P.L. 109–467

To amend the Farm Security and Rural Investment Act of 2002 to extend a suspension of limitation on the period for which certain borrowers are eligible for guaranteed assistance. (Dec. 22, 2006; 120 Stat. 3485)

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