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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Docket No. AO–F&V–946–3; FV03–946–01 FR]

Irish Potatoes Grown in Washington; Order Amending Marketing Order No. 946

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the marketing order (order) for Irish potatoes grown in Washington. Irish potato growers, voting in a mail referendum held March 18 through April 8, 2005 voted on seven amendments proposed by the State of Washington Potato Committee (Committee), which is responsible for local administration of the order, and two amendments proposed by the Agricultural Marketing Service of USDA. Of the nine amendments proposed, seven were favored, including: Adding authority for container and marking regulations; requiring Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination; updating order provisions pertaining to establishment of districts and apportionment of Committee membership among those districts; allowing for nominations to be held at industry meetings or events; adding authority to change the size of the Committee; adding authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve; and, requiring continuance referenda to be conducted every six years. The two amendments that failed include: requiring Committee nominees to submit a written background and acceptance statement prior to selection by USDA and establishing tenure limitations for Committee members.

DATES: This rule is effective July 19, 2005.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Teresa Hutchinson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 385, Portland, OR 97204; telephone (503) 326–2724 or Fax (503) 326–7440.

Small businesses may request information on this proceeding 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: Prior documents in this proceeding: Notice of Hearing issued on October 6, 2003, and published in the October 10, 2003, issue of the **Federal Register** (68 FR 58638); Recommended Decision issued on November 19, 2004 and published in the November 26, 2004 issue of the **Federal Register** (69 FR 68819); and a Secretary's Decision and Referendum Order issued February 8, 2005, and published in the **Federal Register** on February 14, 2005 (70 FR 7437).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held November 20, 2003, in Moses Lake, Washington. Notice of the hearing was issued October 6, 2003 and published in the October 10, 2003 issue of the **Federal Register** (68 FR 58638). The hearing was held to consider the proposed amendment of Marketing Order No. 946, regulating the handling of Irish potatoes grown in the State of Washington, hereinafter referred to as the ''order.'' The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained seven proposals submitted by the Committee and two proposals by the Agricultural Marketing Committee (AMS).

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 19, 2004, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 27, 2004. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written comments on the proposed information collection requirements were also due by November 4, 2004. No comments or exceptions were filed to either the Recommended Decision or the information collection requirements.

A Secretary's Decision and Referendum Order was issued on February 8, 2005 directing that a referendum be conducted during the period March 18 through April 8, 2005, among growers of Irish potatoes to determine whether they favored the proposed amendments to the order. The voters voting in the referendum favored six of the amendments proposed by the Committee and one of the amendments proposed by USDA.

The amendments favored by voters and included in this order will:

1. Add authority for the Committee to recommend container and marking regulations. Regulations could include specification of the size, capacity, weight, dimensions, pack, and marking or labeling of containers used in the packaging or handling of Irish potatoes grown in Washington. This amendment will also add two new definitions to the order: ''Pack'' and ''container.''

2. Require Committee producer members to have produced potatoes for the fresh market in at least 3 out of the last 5 years prior to nomination.

3. Update order provisions pertaining to establishment of districts and apportionment of Committee membership among those districts. This

amendment will incorporate language currently in the order's administrative rules and regulations into the language of the order.

4. Allow for nominations to be held at industry meetings or events in addition to or in place of meetings held in each of the five districts.

5. Add authority for the Committee to recommend changes in the size of the administrative committee. In recommending any such changes, the following will be considered: (1) Shifts in acreage within districts and within the production area during recent years; (2) the importance of new production in its relation to existing districts; (3) equitable relationship between Committee apportionment and the various districts; and (4) other relevant factors.

6. Add authority to allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve. Any designee must be a current Committee member alternate of the same classification (handler or producer) to serve in the absent Committee member's stead.

7. Require continuance referenda to be conducted every six years.

To become effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of Irish potatoes represented by voters voting in the referendum.

AMS also proposed to allow such changes as may be necessary to the order so that all of the order's provisions conform to the effectuated amendments. None were deemed necessary.

The amended marketing agreement was subsequently mailed to all Irish potato handlers in the production area for their approval. The marketing agreement was not approved by handlers representing at least 50 percent of the volume of Irish potatoes handled by all handlers during the representative period of July 1, 2003, through June 30, 2004.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 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 so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $6,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small businesses. The record evidence is that while minimal costs may occur upon implementation of some of the proposed amendments, those costs would be outweighed by the benefits expected to accrue to the Washington fresh potato industry.

The record indicates that there are about 39 fresh potato handlers currently regulated under the order. With total fresh sales valued at $108 million, on average, these handlers each received $2.8 million. In addition, there are about 160 producers of fresh potatoes in the production area. With total fresh sales at the producer level valued at $58 million, each grower's average receipts would be $362,500. Witnesses testified that about 76 percent of these producers are small businesses.

It is reasonable to conclude that a majority of the fresh Washington potato handlers and producers are small businesses.

Potato Industry Overview

Record evidence supplied by the Washington State Potato Commission indicates that there are approximately 323 potato producers in the State, of which approximately 160 (50 percent) are producers of fresh market potatoes. Approximately 76 percent of the fresh market potato producers are small entities, according to the SBA definition. Many of these farming operations also produce potatoes for the processing market. The Washington State potato industry also includes 39 handlers and 12 processing plants.

A 2001 publication of Washington State University (WSU) Extension estimated that total demand for potatoes produced in Washington State was $495 million dollars. Of this total sales value figure for Washington potato producers, fresh market potato pack-out represented approximately 12 percent, with producer sales valued at $58 million. The largest proportion of the crop ($357 million or 72 percent) was represented by sales to the frozen potato product market, principally for French fries. Other uses included seed potatoes, dehydration and potato chips.

The WSU report also explained that the supply of fresh market potatoes is handled by various potato packers (handlers) whose operations vary in size. These handlers supply the retail market, including supermarkets and grocery stores, as well as restaurants and other foodservice operations. Potatoes are prepared for the fresh market by cleaning, sorting, grading, and packaging before shipment is made to final destinations. Due to customer specifications about sizes, shapes, and blemishes, as well as the minimum quality, size, and maturity regulations of the order, about 42–43 percent of the potatoes delivered to handlers are graded out of the fresh market. Potatoes not meeting grade are generally delivered to processors for use in the frozen French fry and dehydrated potato markets. The total output of the fresh pack industry in terms of sales value is $108 million.

Washington State acreage and production is second only to that of Idaho, but its yields per acre are the highest of any State in the United States. Produced on 165,000 acres, total potato production in Washington in 2002 was 92.4 million hundredweight, with an average yield of 560 hundredweight per acre. Over the last several years, Washington has produced about 21 percent of the total U.S. potato production on about 13 percent of the total acreage dedicated to potatoes. Washington's share of the total value has been about 17 percent of the nation's total. Fresh utilization has varied between 11 percent and 15 percent from 1993 through 2002. These figures are based on data published by the USDA's National Agricultural Statistical Service (NASS).

The record indicates that soil type, climate, and number of irrigated acres combine to make Washington an excellent area to grow potatoes. In 2000, Washington produced a record crop with 105 million hundredweight grown on 175,000 acres with a total industry value of $555.2 million. This represents a substantial increase from 1949—the year in which the marketing order was established—in which producers harvested 29,000 acres with a yield of 6.4 million hundredweight of potatoes valued at $14.8 million. According to testimony, the producer price per hundredweight of potatoes was $2.30 in 1949 and $5.40 in 2002.

Witnesses at the hearing explained that potato production is dependent on many factors over which they have little control, including water availability, weather, and pest and weed pressures.

For example, the potato crop may be of higher average quality one year, yielding an increased supply of U.S. No. 1 grade potatoes, and have an overall lower quality the next year with a preponderance of U.S. No. 2 grade potatoes.

According to testimony, U.S. No. 2 grade potatoes in Washington are generally diverted for use in making dehydrated potato products. In addition, U.S. No. 2 grade potatoes are occasionally in demand as ''peelers'' for use in soups and salads, or as ''natural'' fries. Regardless of the secondary products markets, witnesses explained, the fresh, table stock market is an important additional market for U.S. No. 2 grade potatoes. Witnesses explained that the Washington potato industry cannot currently take advantage of this market without container marking authority. Having the additional flexibility to pack U.S. No. 2 grade potatoes in labeled cartons will help the industry overall.

This final rule amends § 946.52, Issuance of regulations, to add authority for the Committee to recommend container and marking regulations to the USDA for subsequent implementation. This will be in addition to the existing authority for grade, size, quality and maturity requirements. Two new definitions, § 946.17, Pack, and § 946.18, Container, will be added to the order.

In testifying in support of this amendment, witnesses cited an example of how this authority could be used. They stated that the Committee wants to respond to customer demand for U.S. No. 2 grade potatoes packed in cartons, but at the same time it wants to ensure that such cartons will be properly labeled. Three people testified in favor of this proposal, and no one testified in opposition. The three witnesses covered similar themes in expressing their views on the proposal.

Each stated that the U.S. potato market is highly competitive and that the potato industry in Washington needs to be vigilant in responding to market needs so as not to lose market share to other states. Testimony indicated that the fresh market potato industry in Washington needs to ensure that their customers are receiving what they order, and must remain flexible and innovative. All three witnesses emphasized that offering appropriate packaging is a key element of being flexible and responsive to customers.

The witnesses offered an historical perspective by pointing out that 40 years ago, the industry standard for potato packaging was a 50- or 100-pound burlap bag. The passing of 30 years saw the phasing in of 50-pound cartons and polyethylene (poly) bags. Now, potatoes are shipped in burlap, cartons, poly, mesh, cardboard bulk displays and baler bags. Container sizes can range from 2 pounds to 100 pounds. It was emphasized that the industry is constantly looking for new packaging and delivery methods.

Witnesses stated that as early as 1994, the Committee began receiving requests from retailers and wholesalers to pack U.S. No. 2 grade potatoes from Washington in 50 lb. cartons. These customers cited a number of reasons for wanting the U.S. No. 2 grade potatoes in cartons, including ease of handling and stacking in warehouses, improved worker safety, and better product protection (for example, less ''greening'' from exposure to light, and reduced bruising during transport.)

Although authority exists in the order for the Committee to recommend regulations to allow packing of U.S. No. 2 grade potatoes in cartons, witnesses explained that up until now the Committee has chosen not to permit this lower grade to be packed in cartons because of the inability to mandate labeling. The current handling regulations specify that only U.S. No. 1 or better grade potatoes may be packed in cartons, and as such, buyers of Washington potatoes have learned to expect this premium grade when purchasing potatoes in cartons. Adding this labeling authority will provide assurance to customers and to the industry that the product being shipped is properly identified. Mandatory labeling prevents handlers from misrepresenting the quality of the potatoes packed in the carton. Even one handler sending substandard product to customers can mar the reputation of the Washington State potato industry, according to witnesses.

Witnesses stated that upholding the integrity of the Washington State potato industry is as important to producers as meeting customer specifications. Mandating labeling will help ensure product integrity. The Committee has discussed that without the labeling authority, a customer could potentially receive U.S. No. 2 grade potatoes from a handler, thinking that they are of U.S. No. 1 grade quality. This could damage customer perceptions of the higher-grade potatoes coming out of Washington. Labeling authority will help alleviate consumer perception problems. Further, not only will it help verify that handlers are putting the right product into the right packaging, but it also will assure customers that they are actually receiving what they have ordered.

Witnesses also emphasized the minimal additional cost of implementing this proposal. They point out that handlers' facilities are already configured for packing potatoes in cartons, and for labeling those cartons, so there is no need for any equipment changes or additions. In the witnesses' view, any additional costs a handler would have in packing potatoes in cartons rather than sacks would be offset by the increased selling price.

Requiring labeling of cartons will help to improve market transactions between seller and buyer by assuring all concerned as to the exact content of such cartons. Washington producers and handlers will benefit from taking advantage of another market niche, with minimal additional cost.

Testimony and industry data together indicate that little to no differential impact between small versus large producers or handlers would result from the proposed amendment to authorize container and labeling requirements. Although not easily quantifiable, the USDA concurs that benefits to the potato industry appear to substantially outweigh the potential costs associated with implementing this proposal.

Remaining amendment proposals are administrative in nature and will impose no new regulatory burdens on Washington potato producers or handlers. They should benefit the industry by improving the operation of the program and making it more responsive to industry needs.

This final rule amends § 946.25, Selection, of the order to require that producer members of the Committee are current producers of fresh potatoes. The amendment will ensure that the Committee is representative of, and responsive to, those producers the program impacts most directly. No additional costs are anticipated.

This final rule amends § 946.31, Districts, by replacing obsolete order language pertaining to establishment of districts and allocation of Committee membership among those districts will simply update the order. To the extent updating order language simplifies the program and reduces confusion, it will benefit the industry.

This final rule amends § 946.32, Nomination, of the order to allow nominations of Committee members to be conducted through mail balloting or at meetings held in each of the five established districts. Allowing nominations to be made at larger, industry-wide meetings will provide the industry with an additional option. This option could result in the Committee reaching a larger audience of producers and handlers, thereby broadening

industry participation and facilitating the nomination process.

This final rule amends § 946.23, Alternate members, by adding authority to the marketing order that will allow temporary alternates to serve when a Committee member and that member's alternate are unable to serve. It will also amend § 946.22, Establishment and membership, and § 946.24, Procedure, by adding authority to the marketing order to allow for changes in the size of the Committee. The Washington Potato Committee consists of 10 producers, 5 handlers, and their alternates. Changing the size of the Committee will allow the industry to adjust to changes in fresh potato production patterns and in the number of active industry participants.

An increase in Committee size could lead to marginally higher program costs because Committee members are reimbursed for expenses they incur in attending meetings and performing other duties under the order. A reduction in Committee size (deemed to be more likely according to the record) would likewise reduce program costs. Any recommendation to change the size of the Committee would be considered in terms of cost and the need to ensure appropriate representation of producers and handlers in Committee deliberations.

This final rule amends § 946.63, Termination, to require periodic continuance referenda to ascertain industry support for the program will allow producers the opportunity to vote on whether to continue the operation of the order.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), any reporting and recordkeeping provision changes that would be generated by these amendments would be submitted to the Office of Management and Budget (OMB). Current information collection requirements for part 946 are approved by OMB under OMB number 0581–0178.

The Washington Potato Committee recommended amending producer eligibility requirements to require production of potatoes for the fresh market for 3 out of the 5 years of production prior to nomination. The Committee has also made recommendations that would streamline the nomination process and increase industry participation in nominations. In conformance with these recommendations, the confidential qualification and acceptance statement will be combined in the appointment of committee members. This form is based on the currently approved Confidential Background Statement for the Washington Potato Marketing Committee, and no change in the information collection burden or further OMB approval is necessary.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing dates were widely publicized throughout the Washington potato industry, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments to Marketing Order 946 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. When adopted, these amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 the Department 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 there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the 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 the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Order Amending the Order Regulating Irish Potatoes Grown in Washington

Findings and Determinations

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determination previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order No. 946 (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of Irish potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of Irish potatoes grown in the production area; and

(5) All handling of Irish potatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make the amendments to this order effective not later than one day after publication in the **Federal Register**. A later effective date would unnecessarily delay implementation of the approved changes, which are expected to benefit the Washington Irish potato industry. Immediate implementation of the amendments is necessary in order to make the amendments effective as specified.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act; 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping Irish potatoes covered by the order as hereby amended) who, during the period July 1, 2003, through June 30, 2004, handled 50 percent or more of the volume of such Irish potatoes covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of July 1, 2003, through June 30, 2004 (which has been deemed to be a representative period), have been engaged within the production area in the production of such Irish potatoes, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of Irish potatoes in the production area.

Order Relative to Handling of Irish Potatoes Grown in Washington

It is therefore ordered, That on and after the effective date hereof, all handling of Irish potatoes grown in Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing order amending the order contained in the Recommended Decision issued by the Administrator on November 19, 2004, and published in the **Federal Register** on November 26, 2004, shall be and are the terms and provisions of this order amending the order and set forth in full herein.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set out it the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add a new § 946.17 to read as follows:

§ 946.17 Pack.

Pack means a quantity of potatoes in any type of container and which falls within the specific weight limits or within specific grade and/or size limits, or any combination thereof, recommended by the committee and approved by the Secretary.

■ 3. Add a new § 946.18 to read as follows:

§ 946.18 Container.

Container means a sack, box, bag, crate, hamper, basket, carton, package, barrel, or any other type of receptacle used in the packing, transportation, sale or other handling of potatoes.

■ 4. In § 946.22, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.22 Establishment and membership.

* * * * *

(b) The Secretary, upon recommendation of the committee, may reestablish districts, may reapportion members among districts, may change the number of members and alternate members, and may change the composition by changing the ratio of members, including their alternates. In recommending any such changes, the following shall be considered:

(1) Shifts in acreage within districts and within the production area during recent years;

(2) The importance of new production in its relation to existing districts;

(3) The equitable relationship between committee apportionment and districts; and

(4) Other relevant factors.

■ 5. In § 946.23, designate the current text as paragraph (a) and add a new paragraph (b) to read as follows:

§ 946.23 Alternate members.

* * * * *

(b) In the event that both a member and his or her alternate are unable to attend a Committee meeting, the member, the alternate member, or the Committee members present, in that order, may designate another alternate of the same classification (handler or producer) to serve in such member's place and stead.

■ 6. Section 946.24 is amended by:
■ A. Revising paragraph (a).
■ B. Redesignating paragraph (b) as paragraph (c).
■ C. Adding a new paragraph (b).

The revisions read as follows:

§ 946.24 Procedure.

(a) Sixty percent of the committee members shall constitute a quorum and a concurring vote of 60 percent of the committee members will be required to pass any motion or approve any committee action.

(b) The quorum and voting requirements of paragraph (a) of this section shall not apply to the designation of temporary alternates as provided in § 946.23.

* * * * *

■ 7. Section 946.25 is amended by:
■ A. Revising paragraph (a).
■ B. Revising paragraph (c).

The revisions read as follows:

§ 946.25 Selection.

(a) Persons selected as committee members or alternates to represent producers shall be individuals who are producers of fresh potatoes in the respective district for which selected, or officers or employees of a corporate producer in such district. Such individuals must also have produced potatoes for the fresh market for at least three out of the five years prior to nomination.

* * * * *

(c) The Secretary shall select committee membership so that, during each fiscal period, each district, as designated in § 946.31, will be represented as follows:

(1) District No. 1—Three producer members and one handler member;

(2) District No. 2—Two producer members and one handler member;

(3) District No. 3—Two producer members and one handler member;

(4) District No. 4—Two producer members and one handler member;

(5) District No. 5—One producer member and one handler member.

■ 8. Revise § 946.31 to read as follows:

§ 946.31 Districts.

For the purpose of determining the basis for selecting committee members, the following districts of the production area are hereby established:

(a) District No. 1—The counties of Ferry, Stevens, Pend Oreille, Spokane, Whitman, and Lincoln, plus the East Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in either the Quincy or South Irrigation Districts which lies east of township vertical line R27E, plus the area of Adams County not included in either of the South or Quincy Irrigation Districts.

(b) District No. 2—The counties of Kittitas, Douglas, Chelan, and Okanogan, plus the Quincy Irrigation District of the Columbia Basin Project, plus the area of Grant County not included in the East or South Irrigation Districts which lies west of township line R28E.

(c) District No. 3—The counties of Benton, Klickitat, and Yakima.

(d) District No. 4—The counties of Walla Walla, Columbia, Garfield, and Asotin, plus the South Irrigation District of the Columbia Basin Project, plus the area of Franklin County not included in the South District.

(e) District No. 5—All of the remaining counties in the State of Washington not included in Districts No. 1, 2, 3, and 4 of this section.

■ 9. Amend § 946.32 by revising paragraph (a) to read as follows:

§ 946.32 Nomination.

* * * * *

(a) Nominations for Committee members and alternate members shall be made at a meeting or meetings of producers and handlers held by the Committee or at other industry meetings or events not later than May 1 of each year; or the Committee may conduct nominations by mail not later than May 1 of each year in a manner recommended by the Committee and approved by the Secretary.

* * * * *

■ 10. Amend § 946.52 by adding a new paragraph (a)(5) to read as follows:

§ 946.52 Issuance of regulations.

(a) * * *

(5) To regulate the size, capacity, weight, dimensions, pack, and marking or labeling of the container, or containers, which may be used in the packing or handling of potatoes, or both.

* * * * *

■ 11. In § 946.63, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 946.63 Termination.

* * * * *

(d) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth thereafter to ascertain whether producers favor continuance of this part.

* * * * *

Dated: July 11, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–14004 Filed 7–15–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2003–15682]

RIN 2120–AH81

Digital Flight Data Recorder Requirements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the **Federal Register** on July 18, 2003 (68 FR 42932). That final rule amended appendices in 14 CFR parts 121, 125, and 135. In that final rule the FAA inadvertently did not make conforming amendments to two parts of Appendix M of part 121.

DATES: Effective July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, Air Transportation Division, AFS–201A, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166; facsimile (202) 267–5229; e-mail *gary.davis@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA published a final rule on July 18, 2003, that made changes to recording specifications for digital flight data recorders required in 14 CFR parts 121, 125, and 135. Since that rulemaking, two editions of the Code of Federal Regulations have been published (2004, 2005), and each new edition includes two small errors that we are correcting with this technical amendment. Both errors are found in Appendix M of part 121. This appendix lists airplane flight recorder specifications for all 88 parameters that are required for aircraft operating under the rules of part 121.

One error is found in parameter 12a, Pitch Control(s) (non fly-by-wire systems), and the other is found in parameter 19, Pitch trim surface position. These errors were brought to out attention in May 2005 and we are correcting them as quickly as possible. The first error lists a ''%'' sign under the ''Accuracy (sensor input) for parameter 12a, but a ''°'' (for ''degree'') sign should be listed. The second error is a spelling error in parameter 19. Parameter 19 currently reads, ''Pitch trime,'' when it should read ''Pitch trim.''

Need for Correction

The two errors published in current versions of 14 CFR are very minor. It is possible that an operator subject to the requirements described in Appendix M, part 121, could be confused by what is published. It is unlikely that these errors will directly affect safety, but it is necessary for us to make sure that all information in the appendix is 100% accurate.

Technical Amendment

The technical amendment will correct parameters 12a and 19 in 14 CFR, part 121, Appendix M.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

■ Accordingly, Title 14 of the Code of Federal Regulations (CFR) part 121 is amended as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 2. Amend Appendix M to part 121 by revising parameter 12a and parameter 19 to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

* * * * *

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
12a. Pitch Control(s) position (non-fly-by-wire systems).	Full Range ..	±2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.5% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
*	*	*	*	*	* *
19. Pitch Trim Surface Position.	Full Range ..	±3° Unless Higher Accuracy Uniquely Required.	1	0.6% of full range.	
*	*	*	*	*	* *

Issued in Washington, DC on July 11, 2005.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations.

[FR Doc. 05–14036 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

RIN 0960–AE79

Technical Revisions to the Supplemental Security Income (SSI) Regulations on Income and Resources

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are amending our SSI regulations by making technical revisions to our rules on income and resources based on the Social Security Protection Act (SSPA) of 2004 and several other statutory changes. These technical revisions update lists of exclusions from income and resources under the SSI program and make additional technical corrections.

DATES: These regulations are effective July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Eric Ice, Social Insurance Specialist, Social Security Administration, Office of Income Security Programs, 252 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–3233 or TTY 1–800–966–5906 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

SUPPLEMENTARY INFORMATION:

Background

The basic purpose of the SSI program (title XVI of the Social Security Act (the Act)) is to ensure a minimum level of income to people who are age 65 or older, or blind or disabled, and who have limited income and resources. The law provides that payments can be made only to people who have income and resources below specified amounts. Therefore, the income and resources a person has are major factors in deciding whether the person is eligible to receive SSI benefits and in computing the amount of benefits.

Regulations for the SSI program are in title 20, chapter III, part 416 of the Code of Federal Regulations. In part 416, subpart K contains our regulations on income and subpart L contains our regulations on resources.

Explanation of Revisions

In these final rules we are making minor revisions and technical changes to the SSI regulations in part 416. We are making technical corrections and adding a paragraph to one section in subpart K to reflect legislative changes, and updating the appendix to subpart K which lists exclusions from income in statutes other than the Act. We also are revising subpart L by adding a new section and making several technical revisions based on the SSPA of 2004, Public Law 108–203, that was enacted on March 2, 2004, by updating the list of statutory exclusions from resources based on statutes other than the Act, and by adding a new section to reflect another legislative change.

Revisions to Subpart K—Income

1. We are revising § 416.1124(c) to update the list of types of unearned income that we do not count to determine eligibility or benefit amount for the SSI program as follows:

- In paragraph (c)(2), a reference is made to the Aid to Families with Dependent Children (AFDC) program. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193) effectively replaced the AFDC program with the Temporary Assistance for Needy Families (TANF) program. We are updating paragraph (c)(2) to reflect this legislative change.
- We are adding paragraph (c)(21) to § 416.1124 to reflect section 7 of the Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 (Pub. L. 105–306) which amended the Act by adding section 1612(b)(22). Section 1612(b)(22) of the Act excludes from income gifts given by certain tax exempt organizations to children who have a life-threatening condition. New paragraph (c)(21) will exclude from income, gifts that are given to, or for the benefit of an individual who has not attained 18 years of age and who has a life-threatening condition. To be excluded from income, these gifts must be given by an organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. The types of gifts that will be excluded are any in-kind gift that is not converted to cash, and cash gifts to the extent that the total gifts do not exceed $2000 in any calendar year. In-kind gifts converted to cash are considered under income counting rules in the month of conversion.

2. We are also revising § 416.1142(a)(1) to replace the reference to ''Aid to Families with Dependent Children'' with ''Temporary Assistance for Needy Families''.

Revisions to Appendix to Subpart K—Income Excluded by Federal Laws Other Than the Act

At the end of part 416, subpart K, we maintain an appendix which lists types of income excluded under the SSI program as provided by Federal laws other than the Act. We update this list periodically. However, we apply the law in effect due to changes in Federal statutes whether or not the list in the appendix has been amended to reflect the statutory changes. We are revising the appendix to subpart K as follows:

1. Under the heading ''IV. NATIVE AMERICANS,'' we are adding the following two new paragraphs:

• Paragraph (b)(37) excludes judgment funds distributed under section 111 of the Michigan Indian Land Claims Settlement Act, (Pub. L. 105–143, 111 Stat. 2665) from income.

• Paragraph (b)(38) excludes judgment funds distributed under section 4 of the Cowlitz Indian Tribe Distribution of Judgment Funds Act, (Pub. L. 108–222, 118 Stat. 624) from income.

2. Under the heading ''V. OTHER,'' we are revising paragraph (a) to exclude from income compensation provided to volunteers by the Corporation for National and Community Service (CNCS), unless they are determined by the CNCS to constitute the minimum wage in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*), or applicable State law, pursuant to 42 U.S.C. 5044(f)(1). This revision is being made pursuant to the National and Community Service Trust Act of 1993, (Pub. L. 103–82) which established the CNCS by combining two formerly independent agencies: ACTION and the Commission on National and Community Service.

3. Under the heading ''V. OTHER,'' we are also adding five new paragraphs setting forth income exclusions as follows:

• Paragraph (h) excludes any matching funds and any interest earned on matching funds in an Individual Development Account (IDA), as provided for by section 415 of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285). These IDAs are funded by a demonstration project authorized by Public Law 105–285.

• Paragraph (i) excludes any earnings, TANF matching funds, and interest in an IDA, as provided for by section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, 42 U.S.C. 604(h)(4)).

• Paragraph (j) excludes payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations, as provided for by section 606 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act of 1996 (Pub. L. 105–78).

• Paragraph (k) excludes payments made to certain Vietnam veterans' children with spina bifida, pursuant to section 421 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997 (Pub. L. 104–204, 38 U.S.C. 1805(d)).

• Paragraph (l) excludes payments made to the children of women Vietnam veterans who suffer from certain birth defects, pursuant to section 401 of the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419; 38 U.S.C. 1833(c)).

Revisions to Subpart L—Resources and Exclusions

1. We are revising §§ 416.1203 and 416.1204, which outline our rules for deeming of resources of essential persons, and alien sponsors, respectively. These revisions are necessary because section 101 of Public Law 108–203 requires that we exclude from counting as a resource for 9 months following the month of receipt restitution of title II, title VIII and title XVI benefits made because of misuse by certain representative payees. In addition to excluding funds paid as restitution to an individual (or spouse), we must also exclude from resources for 9 months following the month of receipt restitution paid to any other person whose income is considered to be income of the individual (or spouse) for SSI purposes. We use the term ''deeming'' to identify the process of considering another person's income and resources to be the individual's own income and resources.

2. We are revising § 416.1210, which lists resource exclusions in the SSI program. Specifically, we are adding a new paragraph (s) to reflect section 7 of Public Law 105–306 which excludes gifts to children with life-threatening conditions. Additionally, we are adding a new paragraph (t) to reflect the provision of section 101 of Public Law 108–203 that excludes from resources for 9 months restitution received for benefits misused by certain representative payees.

3. We are revising § 416.1233, which outlines the exclusion of certain title II and title XVI underpayments from resources under the SSI program. Specifically, we are revising paragraph (a) because section 431 of Public Law 108–203 increased from 6 months to 9 months the time period for excluding from resources any unspent portion of retroactive title II and title XVI benefits.

4. We are revising § 416.1235, which outlines the exclusion of the earned income tax credit (EITC) from resources under the SSI program. This revision is necessary because section 431 of Public Law 108–203 increased from one to 9 months, following the month of receipt, the time period for excluding from resources any unspent portion of Federal income taxes related to an EITC.

5. We are revising § 416.1236, which lists certain exclusions from resources under the SSI program which are required by other Federal statutes. Specifically, we are revising § 416.1236(a)(9) to exclude from resources payments made to volunteers by CNCS, unless determined by CNCS to constitute the minimum wage in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*), or applicable State law, pursuant to 42 U.S.C. 5044(f)(1). This revision is being made pursuant to Public Law 103–82 which established the CNCS by combining two formerly independent agencies: ACTION and the Commission on National and Community Service.

6. We are adding six new paragraphs to § 416.1236(a) which set forth resource exclusions as follows.

• Paragraph (19) excludes any matching funds from a demonstration project authorized by Public Law 105–285 and any interest earned on these matching funds that are retained in an IDA, as provided for by section 415 of Public Law 105–285.

• Paragraph (20) excludes any earnings, TANF matching funds, and accrued interest retained in an IDA, pursuant to section 103 of Public Law 104–193, 42 U.S.C 604(h)(4).

• Paragraph (21) excludes payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations, as provided for by section 606 of Public Law 105–78.

• Paragraph (22) excludes payments made to certain Vietnam veterans' children with spina bifida, pursuant to section 421 of Public Law 104–204, 38 U.S.C. 1805(d).

• Paragraph (23) excludes payments made to the children of women Vietnam veterans who suffer from certain birth defects, pursuant to section 401 of Public Law 106–419, 38 U.S.C. 1833(c).

• Paragraph (24) excludes for the 9 months following the month of receipt, any unspent portion of any refund of Federal income taxes under section 24 of the Internal Revenue Code of 1986

(relating to the child care tax credit), pursuant to section 431 of Public Law 108–203.

7. We are adding a new § 416.1248 to reflect section 7 of Public Law 105–306 which amended the Act by adding section 1613(a)(13). Section 1613(a)(13) of the Act excludes from resources gifts given by certain tax exempt organizations to children who have a life-threatening condition. Section 416.1248 will exclude from resources gifts that are given to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition. To be excluded from resources, these gifts must be given by an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 510(a) of such Code. The types of gifts that will be excluded are any in-kind gift that is not converted to cash, and cash gifts to the extent that the total gifts do not exceed $2000 in any calendar year. In-kind gifts converted to cash are considered under income counting rules in the month of conversion.

8. Finally, we are adding § 416.1249 to reflect section 101 of Public Law 108–203, the SSPA of 2004, which amended the Act by adding section 1613(a)(14). Prior to the SSPA of 2004, we counted restitution for benefits misused by a representative payee as a resource in the month following the month of receipt. Section 101 of the SSPA provides that any amount received as restitution for title II, title VIII or title XVI benefits misused by a representative payee is excluded from counting as a resource for 9 months following the month of receipt. The exclusion applies to any case of benefit misuse by a representative payee with respect to which the Commissioner makes a determination of misuse on or after January 1, 1995.

Regulatory Procedures

Justification for Final Rule

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice of proposed rulemaking (NPRM) and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the NPRM and public comment procedures in this case. Good cause exists because these rules contain only changes that reflect current statutory exclusions of income and resources and make two minor technical changes, none of which involve the discretionary setting of policy. Therefore, opportunity for prior comment is unnecessary, and we are issuing these changes to our regulations as final rules.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule provided by 5 U.S.C. 553(d). As explained above, we are merely implementing non-discretionary changes, minor revisions, and technical changes based on statutory enactments.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these final rules. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules impose no reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program No. 96.006, Supplemental Security Income.)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: April 12, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart K, the appendix of subpart K, and subpart L of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart K—[Amended]

■ 1. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 2. Section 416.1124 is amended by revising the last sentence of paragraph (c)(2), by removing the word ''and'' at the end of paragraph (c)(19), by removing the period at the end of paragraph (c)(20) and adding a semicolon in its place followed by the word ''and'', and by adding paragraph (c)(21) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(2) * * * Assistance based on need includes State supplementation of Federal SSI benefits as defined in subpart T of this part but does not include payments under a Federal/State grant program such as Temporary Assistance for Needy Families under title IV–A of the Social Security Act;

* * * * *

(21) Gifts from an organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code, to, or for the benefit of, an individual who has not attained 18 years of age and who has a life-threatening condition. We will exclude any in-kind gift that is not converted to cash and cash gifts to the extent that the total gifts excluded pursuant to this paragraph do not exceed $2000 in any calendar year. In-kind gifts converted to cash are considered under income counting rules in the month of conversion.

■ 3. Section 416.1142 is amended by revising paragraph (a)(1) to read as follows:

§ 416.1142 If you live in a public assistance household.

(a) * * *

(1) Title IV–A of the Social Security Act (Temporary Assistance for Needy Families);

* * * * *

■ 4. The appendix to subpart K of part 416 is amended by adding new paragraphs (b)(37) and (b)(38) under Part IV, and by revising paragraph (a) (the note following paragraph (a) remains unchanged) and adding new paragraphs

(h), (i), (j), (k) and (l) under Part V to read as follows:

Appendix to Subpart K of Part 416—[Amended]

* * * * *

IV. Native Americans

* * * * *

(b) * * *

(37) Judgment funds distributed under section 111 of the Michigan Indian Land Claims Settlement Act, (Pub. L. 105–143, 111 Stat. 2665).

(38) Judgment funds distributed under section 4 of the Cowlitz Indian Tribe Distribution of Judgment Funds Act, (Pub. L. 108–222, 118 Stat. 624).

* * * * *

V. Other

(a) Compensation provided to volunteers by the Corporation for National and Community Service (CNCS), unless determined by the CNCS to constitute the minimum wage in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*), or applicable State law, pursuant to 42 U.S.C. 5044(f)(1).

* * * * *

(h) Any matching funds from a demonstration project authorized by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285) and any interest earned on these matching funds in an Individual Development Account, pursuant to section 415 of Pub. L. 105–285 (112 Stat. 2771).

(i) Any earnings, Temporary Assistance for Needy Families matching funds, and interest in an Individual Development Account, pursuant to section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193, 42 U.S.C. 604(h)(4)).

(j) Payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations, pursuant to section 606 of the Departments of Labor, Health and Human Services and Education and Related Agencies Appropriations Act of 1996 (Pub. L. 105–78).

(k) Payments made to certain Vietnam veterans' children with spina bifida, pursuant to section 421 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1997 (Pub. L. 104–204, 38 U.S.C. 1805(a)).

(l) Payments made to the children of women Vietnam veterans who suffer from certain birth defects, pursuant to section 401 of the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419 (38 U.S.C. 1833(c)).

Subpart L—[Amended]

■ 5. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

■ 6. Section 416.1203 is amended by revising the first sentence to read as follows:

§ 416.1203 Deeming of resources of an essential person.

In the case of a qualified individual (as defined in § 416.221) whose payment standard has been increased because of the presence of an essential person (as defined in § 416.222), the resources of such qualified individual shall be deemed to include all the resources of such essential person with the exception of the resources explained in § 416.1210(t) and § 416.1249. * * *

■ 7. Section 416.1204 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 416.1204 Deeming of resources of the sponsor of an alien.

* * * * *

(a) *Exclusions from the sponsor's resources.* * * * The applicable exclusions from resources are explained in § 416.1210 (paragraphs (a) through (i), (k), and (m) through (t)) through § 416.1239 and § 416.1247 through § 416.1249. * * *

* * * * *

■ 8. Section 416.1210 is amended by removing the word ''and'' at the end of paragraph (q), by removing the period at the end of paragraph (r) and adding a semicolon in its place, and by adding paragraphs (s) and (t) to read as follows:

§ 416.1210 Exclusion from resources; general.

* * * * *

(s) Gifts to children under age 18 with life-threatening conditions as provided in § 416.1248; and

(t) Restitution of title II, title VIII or title XVI benefits because of misuse by certain representative payees as provided in § 416.1249.

■ 9. Section 416.1233 is amended by revising paragraph (a) to read as follows:

§ 416.1233 Exclusion of certain underpayments from resources.

(a) *General.* In determining the resources of an eligible individual (and spouse, if any), we will exclude, for 9 months following the month of receipt, the unspent portion of any title II or title XVI retroactive payment received on or after March 2, 2004. *Exception:* We will exclude for 6 months following the month of receipt the unspent portion of any title II or title XVI retroactive payment received before March 2, 2004. This exclusion also applies to such payments received by any other person whose resources are subject to deeming under this subpart.

* * * * *

■ 10. Section 416.1235 is revised to read as follows:

§ 416.1235 Exclusion of earned income tax credit.

In determining the resources of an individual (and spouse, if any), we exclude for the 9 months following the month of receipt the unspent portion of any refund of Federal income taxes under section 32 of the Internal Revenue Code (relating to earned income tax credit) and the unspent portion of any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of earned income tax credit). This exclusion applies to such refunds and such payments received on or after March 2, 2004. Any unspent funds retained until the first moment of the tenth month following their receipt are subject to resource counting at that time. *Exception:* We will exclude for the month following the month of receipt the unspent portion of any refund of Federal income taxes under section 32 of the Internal Revenue Code (relating to earned income tax credit) and the unspent portion of any payment from an employer under section 3507 of the Internal Revenue Code (relating to advance payment of earned income tax credit) received before March 2, 2004.

■ 11. Section 416.1236 is amended by revising paragraph (a)(9) and adding new paragraphs (a)(19) through (a)(24) to read as follows:

§ 416.1236 Exclusions from resources; provided by other statutes.

(a) * * *

(9) Compensation provided to volunteers by the Corporation for National and Community Service (CNCS), unless determined by the CNCS to constitute the minimum wage in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*), or applicable State law, pursuant to 42 U.S.C. 5044(f)(1).

* * * * *

(19) Any matching funds and interest earned on matching funds from a demonstration project authorized by Public Law 105–285 that are retained in an Individual Development Account, pursuant to section 415 of Public Law 105–285 (112 Stat. 2771).

(20) Any earnings, Temporary Assistance for Needy Families matching funds, and accrued interest retained in an Individual Development Account, pursuant to section 103 of Public Law 104–193 (42 U.S.C. 604(h)(4)).

(21) Payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of participation in certain military operations, pursuant to section 606 of Public Law 105–78 and section 657 of Public Law 104–201 (110 Stat. 2584).

(22) Payments made to certain Vietnam veterans' children with spina bifida, pursuant to section 421 of Public Law 104–204 (38 U.S.C. 1805(d)).

(23) Payments made to the children of women Vietnam veterans who suffer from certain birth defects, pursuant to section 401 of Public Law 106–419, (38 U.S.C. 1833(c)).

(24) For the 9 months following the month of receipt, any unspent portion of any refund of Federal income taxes under section 24 of the Internal Revenue Code of 1986 (relating to the child care tax credit), pursuant to section 431 of Public Law 108–203 (118 Stat. 539).

■ 12. Section 416.1248 is added to read as follows:

§ 416.1248 Exclusion of gifts to children with life-threatening conditions.

In determining the resources of an individual who has not attained 18 years of age and who has a life-threatening condition, we will exclude any gifts from an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code. We will exclude any in-kind gift that is not converted to cash and cash gifts to the extent that the total gifts excluded pursuant to this paragraph do not exceed $2000 in any calendar year. In-kind gifts converted to cash are considered under income counting rules in the month of conversion.

■ 13. Section 416.1249 is added to read as follows:

§ 416.1249 Exclusion of payments received as restitution for misuse of benefits by a representative payee.

In determining the resources of an individual (and spouse, if any), the unspent portion of any payment received by the individual as restitution for title II, title VIII or title XVI benefits misused by a representative payee under § 404.2041, § 408.641 or § 416.641, respectively, is excluded for 9 months following the month of receipt.

[FR Doc. 05–14050 Filed 7–15–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 529

Certain Other Dosage Form New Animal Drugs; Oxytetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for use of oxytetracycline hydrochloride soluble powder for skeletal marking of finfish fry and fingerlings by immersion.

DATES: This rule is effective July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov*.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed a supplement to NADA 8–622 that provides for use of TERRAMYCIN–343 (oxytetracycline HCl) Soluble Powder for skeletal marking of finfish fry and fingerlings by immersion. The approval of this supplemental NADA relied on publicly available safety and effectiveness data contained in Public Master File (PMF) 5667 which were compiled under National Research Support Project-7 (NRSP–7), a national agricultural research program for obtaining clearances for use of new drugs in minor animal species and for special uses. In addition, the supplemental NADA provides for the addition of statements to product labeling warning against the use of this product in drinking water of lactating dairy cattle. The supplemental NADA is approved as of June 13, 2005, and the regulations in 21 CFR 529.1660 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, FDA has found that the regulations contain incorrect statements warning against the use of oxytetracycline soluble powder in calves intended for veal. Accordingly, the regulations in 21 CFR 520.1660d are amended to reflect appropriate warning statements for this product. This action is being taken to improve the accuracy of the regulations.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(d)(4) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 520 and 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 520 and 529 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1660d is amended by revising paragraph (d)(1)(iv)(C) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

* * * * *

(d) * * *

(1) * * *

(iv) * * *

(C) *Limitations*. Prepare a fresh solution daily. Administer up to 14 days. Do not use for more than 14 consecutive days. Use as sole source of oxytetracycline. Do not administer this product with milk or milk replacers. Administer 1 hour before or 2 hours after feeding milk or milk replacers. Withdraw 5 days prior to slaughter. A milk discard period has not been established for this product in lactating dairy cattle. Do not use in female dairy cattle 20 months of age or older.

* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 529.1660 [Amended]

■ 4. Section 529.1660 is amended in paragraph (b)(2) by removing ''No. 059130'' and by adding in its place ''Nos. 000069 and 059130''.

Dated: July 1, 2005.

Catherine P. Beck,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 05–14017 Filed 7–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 26

[TD 9214]

RIN 1545–BC60

Predeceased Parent Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the predeceased parent rule, which provides an exception to the general rules of section 2651 of the Internal Revenue Code (Code) for determining the generation assignment of a transferee of property for generation-skipping transfer (GST) tax purposes. These regulations also provide rules regarding a transferee assigned to more than one generation. The regulations reflect changes to the law made by the Taxpayer Relief Act of 1997 and generally apply to individuals, trusts, and estates.

DATES: *Effective Date:* These regulations are effective July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Lian A. Mito at (202) 622–7830 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 3, 2004, a notice of proposed rulemaking (REG–145988–03) relating to the predeceased parent rule was published in the **Federal Register** (69 FR 53862). The public hearing scheduled for December 14, 2004, was cancelled because no requests to speak were received. Written 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. The revisions are discussed below.

Summary of Comments

The proposed regulations provided that, for purposes of determining whether the predeceased parent rule applies, an individual transferee's interest in property is established or derived at the time the transferor who transferred the property is subject to either the gift or estate tax on the property. If the transferor will be subject to a transfer tax imposed on the property transferred on more than one occasion, then the relevant time for determining whether the predeceased parent rule applies is the earliest time at which the transferor is subject to the gift or estate tax. In the case of a trust for which an election under section 2056(b)(7) (QTIP election) has been made, the proposed regulations provided that the interest of the remainder beneficiary is considered as established or derived when the QTIP trust was established. However, the proposed regulations also included an exception to this general rule by providing that, to the extent of the QTIP (but not a reverse QTIP) election, the remainder beneficiary's interest is deemed to have been established or derived on the death of the transferor's spouse (the income beneficiary), rather than on the transferor's earlier death.

One commentator indicated that this exception is unnecessary. The commentator believes that the proposed regulations misinterpreted the statute because a remainder beneficiary's interest in a trust that is subject to a QTIP (but not a reverse QTIP) election should always be deemed to have been established, not at the time of the trust's creation, but rather at the time when the income-beneficiary spouse is first subject to gift or estate tax on the trust property. This position applies the definition of ''transferor'' in section 2652 in the context of the reference to ''established and derived'' in section 2651(e), and is based on the conclusion that the tax in this situation is not imposed on the same transferor on more than one occasion. Thus, because the donee or surviving spouse becomes the transferor of a trust that is subject to a QTIP (but not reverse QTIP) election, the remainder beneficiary's interest in such a trust is established upon that spouse's gift of an interest in the trust or that spouse's death, in each case the time at which gift or estate tax on the trust is first imposed on that spouse. Viewed from this perspective, this provision of the proposed regulations is not an exception. The Treasury Department and the IRS agree, and the final regulations adopt the suggested change.

Under the proposed regulations, the predeceased parent rule does not apply to transfers to collateral heirs if, at the time of the transfer, ''the transferor (or the transferor's spouse or former spouse) has any living lineal descendant.'' Thus, under the proposed regulations, if, at the time of the transfer, the transferor has no living lineal descendants but the transferor's spouse or former spouse does, the predeceased parent rule will not apply to any transfer by the transferor to a collateral heir. A number of commentators pointed out that the parenthetical language is inconsistent with the purpose and language of the statute, and will inappropriately narrow the application of the predeceased parent rule with respect to collateral heirs. The Treasury Department and the IRS agree, and the parenthetical language is removed in the final regulations. Accordingly, the final regulations require that, for the predeceased parent rule to apply to transfers to collateral heirs, only the transferor must have no living lineal descendants at the time of the transfer.

The proposed regulations provided an exception to the general rule that assigns an individual to the youngest of the generations to which that individual may be assigned. Under the exception, an adopted individual will be treated as a member of the generation that is one generation below the adoptive parent for purposes of determining whether a transfer to the adopted individual from the adoptive parent (or the spouse or former spouse of the adoptive parent, or a lineal descendant of a grandparent of the adoptive parent) is subject to the GST tax. The proposed regulations defined an ''adopted individual'' as an individual who is: (1) A descendant of a parent of the adoptive parent (or the spouse or former spouse of the adoptive parent); and (2) under the age of 18 at the time of the adoption.

Two commentators expressed concern that this objective test (specifically, the age at the time of the adoption) provides a strong inducement to engage in a tax-motivated adoption, particularly in the case of older minors, because of the amount of GST tax that thereby may be avoided. One commentator suggested lowering the limit on the age of the individual at the time of the adoption for purposes of the test. The other commentator recommended adding a third element to the definition of adopted individual, namely, that the individual was not adopted primarily for tax-avoidance purposes.

The Treasury Department and the IRS continue to believe that certain adopted minors should be treated as a member of the generation that is one generation below the adoptive parent, but only if the adoption is not primarily for the purpose of avoiding GST tax. Therefore, under the final regulations, the adopted individual will be treated as a member of the generation that is one generation below the adoptive parent for purposes of determining whether transfers from certain individuals to the adopted individual are subject to GST tax if the following requirements are satisfied: (1) The individual is legally adopted by the adoptive parent; (2) the individual is a descendant of a parent of the adoptive parent (or the adoptive parent's spouse or former spouse); (3) the individual is under the age of 18 at the time of the adoption; and (4) the individual is not adopted primarily for GST tax-avoidance purposes. The determination of whether an adoption is primarily for GST tax-avoidance purposes is to be made based upon all of the facts and circumstances. The Treasury Department and IRS believe that the most significant factor to be considered is whether there is a bona fide parent/child relationship between the adoptive parent and the adopted individual. Other factors that may be considered include (but are not limited to): the age of the adopted individual at the time of the adoption, and the relationship between the adopted individual and the individual's parents immediately before the adoption. Thus, the adoption of an infant will be less likely to be considered primarily for tax-avoidance purposes than the adoption of an individual who is age 17. Objective evidence that the parent was unwilling or unable to act as the individual's parent (*e.g.*, the parent abandons the individual, or is adjudicated incompetent or incapacitated) may indicate that an adoption is not primarily for tax-avoidance purposes.

One commentator suggested clarifying the interaction between section 2651(b)(3), regarding the treatment of legal adoptions, and section 2651(f)(1), regarding individuals assigned to more than one generation. In order to provide that clarification, the Treasury Department and the IRS confirm that, for purposes of chapter 13, a legal adoption may create an additional generation assignment, but the adoption does not constitute a substitute for the blood relationship. Specifically, an individual who has been adopted will be treated as a blood relative of the adoptive parent under section 2651(b)(3) and generally is treated as a child of the adoptive parent under state law. In spite of the adoption, however, the adopted individual also continues to be a blood relative of the individual's birth parents. Thus, the generation assignment of the adopted individual with regard to a transfer from an ancestor of the birth parent, for example, will continue to be measured under section 2651(b), but, subject to the exception in § 26.2651–2(b), the relationship between them may be subject to the special rule in section 2651(f)(1), which provides that an individual who would be assigned to more than one generation is assigned to the youngest of those generations.

The proposed regulations provided that any individual who dies no later than 90 days after a transfer is treated as having predeceased the transferor. One commentator recommended that the final regulations apply this 90-day rule to inter vivos, as well as testamentary, transfers. The 90-day rule is intended to replace a similar 90-day rule in § 26.2612–1(a)(2), which is limited to testamentary transfers. Moreover, many state statutes contain similar rules that apply only to testamentary transfers. Accordingly, the final regulations do not adopt this recommendation, and revise the language of this provision to confirm that it addresses only transfers occurring by reason of the death of the transferor.

Two commentators requested confirmation that the reference to adoption in § 26.2651–2(b) applies solely for purposes of the rule in section 2651(f)(1) and has no application to the rule in section 2651(b). Accordingly, the introductory language of § 26.2651–2(b) has been revised.

Special Analyses

It has been determined that these proposed regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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 a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small entities.

Drafting Information

The principal author of these regulations is Lian A. Mito of the 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 26

Estate taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

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

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

■ **Paragraph 1.** The authority citation for part 26 continues to read, in part, as follows:

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

■ **Par. 2.** In § 26.2600–1, the table is amended by:

■ 1. Removing the entries for § 26.2612–1, paragraphs (a)(1) and (a)(2).

■ 2. Adding entries for §§ 26.2651–1, 26.2651–2, and 26.2651–3.

The additions read as follows:

§ 26.2600–1 Table of contents.

* * * * *

§ 26.2651–1 Generation assignment.

(a) Special rule for persons with a deceased parent.
(1) In general.
(2) Special rules.
(3) Established or derived.
(4) Special rule in the case of additional contributions to a trust.
(a) Limited application to collateral heirs.
(b) Examples.

§ 26.2651–2 Individual assigned to more than one generation.

(a) In general.
(b) Exception.
(c) Special rules.
(1) Corresponding generation adjustment.
(2) Continued application of generation assignment.
(d) Example.

§ 26.2651–3 Effective dates.

(a) In general.
(b) Transition rule.

■ **Par. 3.** Section 26.2612–1 is amended by:

■ 1. Removing the paragraph designation and heading for (a)(1).

■ 2. Removing paragraph (a)(2).

■ 3. Removing the second sentence of paragraph (f) introductory text.

■ 4. Removing *Examples 6* and *7* in paragraph (f).

■ 5. Redesignating *Examples 8* through *15* as *Examples 6* through *13* in paragraph (f).

■ 6. Revising the first sentence of newly designated *Example 7* in paragraph (f).
■ 7. Revising the first sentence of newly designated *Example 11* in paragraph (f).

The revisions read as follows:

§ 26.2612–1 Definitions.

* * * * *

(f) * * *

Example 7. Taxable termination resulting from distribution. The facts are the same as in Example 6, except twenty years after C's death the trustee exercises its discretionary power and distributes the entire principal to GGC. * * *

* * * * *

Example 11. Exercise of withdrawal right as taxable distribution. The facts are the same as in *Example 10,* except GC holds a continuing right to withdraw trust principal and after one year GC withdraws $10,000. * * *

* * * * *

■ **Par. 4.** Sections 26.2651–1, 26.2651–2 and 26.2651–3 are added to read as follows:

§ 26.2651–1 Generation assignment.

(a) *Special rule for persons with a deceased parent*—(1) *In general.* This paragraph (a) applies for purposes of determining whether a transfer to or for the benefit of an individual who is a descendant of a parent of the transferor (or the transferor's spouse or former spouse) is a generation-skipping transfer. If that individual's parent, who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse), is deceased at the time the transfer (from which an interest of such individual is established or derived) is subject to the tax imposed on the transferor by chapter 11 or 12 of the Internal Revenue Code, the individual is treated as if that individual were a member of the generation that is one generation below the lower of—

(i) The transferor's generation; or

(ii) The generation assignment of the individual's youngest living lineal ancestor who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse).

(2) *Special rules*—(i) *Corresponding generation adjustment.* If an individual's generation assignment is adjusted with respect to a transfer in accordance with paragraph (a)(1) of this section, a corresponding adjustment with respect to that transfer is made to the generation assignment of each—

(A) Spouse or former spouse of that individual;

(B) Descendant of that individual; and

(C) Spouse or former spouse of each descendant of that individual.

(ii) *Continued application of generation assignment.* If a transfer to a trust would be a generation-skipping transfer but for paragraph (a)(1) of this section, any generation assignment determined under this paragraph (a) continues to apply in determining whether any subsequent distribution from (or termination of an interest in) the portion of the trust attributable to that transfer is a generation-skipping transfer.

(iii) *Ninety-day rule.* For purposes of paragraph (a)(1) of this section, any individual who dies no later than 90 days after a transfer occurring by reason of the death of the transferor is treated as having predeceased the transferor.

(iv) *Local law.* A living person is not treated as having predeceased the transferor solely by reason of a provision of applicable local law; *e.g.*, an individual who disclaims is not treated as a predeceased parent solely because state law treats a disclaimant as having predeceased the transferor for purposes of determining the disposition of the disclaimed property.

(3) *Established or derived.* For purposes of section 2651(e) and paragraph (a)(1) of this section, an individual's interest is established or derived at the time the transferor is subject to transfer tax on the property. See § 26.2652–1(a) for the definition of a transferor. If the same transferor, on more than one occasion, is subject to transfer tax imposed by either chapter 11 or 12 of the Internal Revenue Code on the property so transferred (whether the same property, reinvestments thereof, income thereon, or any or all of these), then the relevant time for determining whether paragraph (a)(1) of this section applies is the earliest time at which the transferor is subject to the tax imposed by either chapter 11 or 12 of the Internal Revenue Code. For purposes of section 2651(e) and paragraph (a)(1) of this section, the interest of a remainder beneficiary of a trust for which an election under section 2523(f) or section 2056(b)(7) (QTIP election) has been made will be deemed to have been established or derived, to the extent of the QTIP election, on the date as of which the value of the trust corpus is first subject to tax under section 2519 or section 2044. The preceding sentence does not apply to a trust, however, to the extent that an election under section 2652(a)(3) (reverse QTIP election) has been made for the trust because, to the extent of a reverse QTIP election, the spouse who established the trust will remain the transferor of the trust for generation-skipping transfer tax purposes.

(4) *Special rule in the case of additional contributions to a trust.* If a transferor referred to in paragraph (a)(1) of this section contributes additional property to a trust that existed before the application of paragraph (a)(1), then the additional property is treated as being held in a separate trust for purposes of chapter 13 of the Internal Revenue Code. The provisions of § 26.2654–1(a)(2), regarding treatment as separate trusts, apply as if different transferors had contributed to the separate portions of the single trust. Additional subsequent contributions from that transferor will be added to the new share that is treated as a separate trust.

(b) *Limited application to collateral heirs.* Paragraph (a) of this section does not apply in the case of a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if the transferor has any living lineal descendant at the time of the transfer.

(c) *Examples.* The following examples illustrate the provisions of this section:

Example 1. T establishes an irrevocable trust, Trust, providing that trust income is to be paid to T's grandchild, GC, for 5 years. At the end of the 5-year period or on GC's prior death, Trust is to terminate and the principal is to be distributed to GC if GC is living or to GC's children if GC has died. The transfer that occurred on the creation of the trust is subject to the tax imposed by chapter 12 of the Internal Revenue Code and, at the time of the transfer, T's child, C, who is a parent of GC, is deceased. GC is treated as a member of the generation that is one generation below T's generation. As a result, GC is not a skip person and Trust is not a skip person. Therefore, the transfer to Trust is not a direct skip. Similarly, distributions to GC during the term of Trust and at the termination of Trust will not be GSTs.

Example 2. On January 1, 2004, T transfers $100,000 to an irrevocable inter vivos trust that provides T with an annuity payable for four years or until T's prior death. The annuity satisfies the definition of a qualified interest under section 2702(b). When the trust terminates, the corpus is to be paid to T's grandchild, GC. The transfer is subject to the tax imposed by chapter 12 of the Internal Revenue Code and, at the time of the transfer, T's child, C, who is a parent of GC, is living. C dies in 2006. In this case, C was alive at the time the transfer by T was subject to the tax imposed by chapter 12 of the Internal Revenue Code. Therefore, section 2651(e) and paragraph (a)(1) of this section do not apply. When the trust subsequently terminates, the distribution to GC is a taxable termination that is subject to the GST tax to the extent the trust has an inclusion ratio greater than zero. See section 2642(a).

Example 3. T dies testate in 2002, survived by T's spouse, S, their children, C1 and C2, and C1's child, GC. Under the terms of T's will, a trust is established for the benefit of S and of T and S's descendants. Under the terms of the trust, all income is payable to S during S's lifetime and the trustee may distribute trust corpus for S's health, support

and maintenance. At S's death, the corpus is to be distributed, outright, to C1 and C2. If either C1 or C2 has predeceased S, the deceased child's share of the corpus is to be distributed to that child's then-living descendants, per stirpes. The executor of T's estate makes the election under section 2056(b)(7) to treat the trust property as qualified terminable interest property (QTIP) but does not make the election under section 2652(a)(3) (reverse QTIP election). In 2003, C1 dies survived by S and GC. In 2004, S dies, and the trust terminates. The full fair market value of the trust is includible in S's gross estate under section 2044 and S becomes the transferor of the trust under section 2652(a)(1)(A). GC's interest is considered established or derived at S's death, and because C1 is deceased at that time, GC is treated as a member of the generation that is one generation below the generation of the transferor, S. As a result, GC is not a skip person and the transfer to GC is not a direct skip.

Example 4. The facts are the same as in *Example 3*. However, the executor of T's estate makes the election under section 2652(a)(3) (reverse QTIP election) for the entire trust. Therefore, T remains the transferor because, for purposes of chapter 13 of the Internal Revenue Code, the election to be treated as qualified terminable interest property is treated as if it had not been made. In this case, GC's interest is established or derived on T's death in 2002. Because C1 was living at the time of T's death, the predeceased parent rule under section 2651(e) does not apply, even though C1 was deceased at the time the transfer from S to GC was subject to the tax under chapter 11 of the Internal Revenue Code. When the trust terminates, the distribution to GC is a taxable termination that is subject to the GST tax to the extent the trust has an inclusion ratio greater than zero. See section 2642(a).

Example 5. T establishes an irrevocable trust providing that trust income is to be paid to T's grandniece, GN, for 5 years or until GN's prior death. At the end of the 5-year period or on GN's prior death, the trust is to terminate and the principal is to be distributed to GN if living, or if GN has died, to GN's then-living descendants, per stirpes. S is a sibling of T and the parent of N. N is the parent of GN. At the time of the transfer, T has no living lineal descendant, S is living, N is deceased, and the transfer is subject to the gift tax imposed by chapter 12 of the Internal Revenue Code. GN is treated as a member of the generation that is one generation below T's generation because S, GN's youngest living lineal ancestor who is also a descendant of T's parent, is in T's generation. As a result, GN is not a skip person and the transfer to the trust is not a direct skip. In addition, distributions to GN during the term of the trust and at the termination of the trust will not be GSTs.

Example 6. On January 1, 2004, T transfers $50,000 to a great-grandniece, GGN, who is the great-grandchild of B, a brother of T. At the time of the transfer, T has no living lineal descendants and B's grandchild, GN, who is a parent of GGN and a child of B's living child, N, is deceased. GGN will be treated as a member of the generation that is one generation below the lower of T's generation or the generation assignment of GGN's youngest living lineal ancestor who is also a descendant of the parent of the transferor. In this case, N is GGN's youngest living lineal ancestor who is also a descendant of the parent of T. Because N's generation assignment is lower than T's generation, GGN will be treated as a member of the generation that is one generation below N's generation assignment (*i.e.*, GGN will be treated as a member of her parent's generation). As a result, GGN remains a skip person and the transfer to GGN is a direct skip.

Example 7. T has a child, C. C and C's spouse, S, have a 20-year-old child, GC. C dies and S subsequently marries S2. S2 legally adopts GC. T transfers $100,000 to GC. Under section 2651(b)(1), GC is assigned to the generation that is two generations below T. However, since GC's parent, C, is deceased at the time of the transfer, GC will be treated as a member of the generation that is one generation below T. As a result, GC is not a skip person and the transfer to GC is not a direct skip.

§ 26.2651–2 Individual assigned to more than 1 generation.

(a) *In general*. Except as provided in paragraph (b) or (c) of this section, an individual who would be assigned to more than 1 generation is assigned to the youngest of the generations to which that individual would be assigned.

(b) *Exception*. Notwithstanding paragraph (a) of this section, an adopted individual (as defined in this paragraph) will be treated as a member of the generation that is one generation below the adoptive parent for purposes of determining whether a transfer to the adopted individual from the adoptive parent (or the spouse or former spouse of the adoptive parent, or a lineal descendant of a grandparent of the adoptive parent) is subject to chapter 13 of the Internal Revenue Code. For purposes of this paragraph (b), an adopted individual is an individual who is—

(1) Legally adopted by the adoptive parent;

(2) A descendant of a parent of the adoptive parent (or the spouse or former spouse of the adoptive parent);

(3) Under the age of 18 at the time of the adoption; and

(4) Not adopted primarily for the purpose of avoiding GST tax. The determination of whether an adoption is primarily for GST tax-avoidance purposes is made based upon all of the facts and circumstances. The most significant factor is whether there is a bona fide parent/child relationship between the adoptive parent and the adopted individual, in which the adoptive parent has fully assumed all significant responsibilities for the care and raising of the adopted child. Other factors may include (but are not limited to), at the time of the adoption—

(i) The age of the adopted individual (for example, the younger the age of the adopted individual, or the age of the youngest of siblings who are all adopted together, the more likely the adoption will not be considered primarily for GST tax-avoidance purposes); and

(ii) The relationship between the adopted individual and the individual's parents (for example, objective evidence of the absence or incapacity of the parents may indicate that the adoption is not primarily for GST tax-avoidance purposes).

(c) *Special rules*—(1) *Corresponding generation adjustment*. If an individual's generation assignment is adjusted with respect to a transfer in accordance with paragraph (b) of this section, a corresponding adjustment with respect to that transfer is made to the generation assignment of each—

(i) Spouse or former spouse of that individual;

(ii) Descendant of that individual; and

(iii) Spouse or former spouse of each descendant of that individual.

(2) Continued application of generation assignment. If a transfer to a trust would be a generation-skipping transfer but for paragraph (b) of this section, any generation assignment determined under paragraph (b) or (c) of this section continues to apply in determining whether any subsequent distribution from (or termination of an interest in) the portion of the trust attributable to that transfer is a generation-skipping transfer.

(d) *Example*. The following example illustrates the provisions of this section:

Example. T has a child, C. C has a 20-year-old child, GC. T legally adopts GC and transfers $100,000 to GC. GC's generation assignment is determined by section 2651(b)(1) and GC is assigned to the generation that is two generations below T. In addition, because T has legally adopted GC, GC is generally treated as a child of T under state law. Under these circumstances, GC is an individual who is assigned to more than one generation and the exception in § 26.2651–2(b) does not apply. Thus, the special rule under section 2651(f)(1) applies and GC is assigned to the generation that is two generations below T. GC remains a skip person with respect to T and the transfer to GC is a direct skip.

§ 26.2651–3 Effective dates.

(a) *In general*. The rules of §§ 26.2651–1 and 26.2651–2 are applicable for terminations, distributions, and transfers occurring on or after July 18, 2005.

(b) *Transition rule*. In the case of transfers occurring after December 31, 1997, and before July 18, 2005,

taxpayers may rely on any reasonable interpretation of section 2651(e). For this purpose, these final regulations, as well as the proposed regulations issued on September 3, 2004 (69 FR 53862), are treated as a reasonable interpretation of the statute.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: June 30, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–13799 Filed 7–15–05; 8:45 am]

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DEPARTMENT OF THE TREASURY

26 CFR Part 301

[TD 9215]

RIN 1545–BC46

Substitute for Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations and removal of final regulations.

SUMMARY: This document contains temporary regulations relating to returns prepared or signed by the Commissioner or other internal revenue officers or employees under section 6020 of the Internal Revenue Code. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective July 18, 2005.

Applicability Date: For dates of applicability, see § 301.6020–1(d).

FOR FURTHER INFORMATION CONTACT: Tracey B. Leibowitz, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

This document contains amendments to 26 CFR part 301 under section 6020 of the Internal Revenue Code (Code), 26 U.S.C. sec. 6020. Section 301.6020–1 of the Procedure and Administration Regulations provides for the preparation or execution of returns by authorized internal revenue officers or employees. Section 1301(a) of the Taxpayer Bill of Rights Act of 1996, Pub. L. 104–168 (110 Stat. 1452), amended section 6651 to add subsection (g)(2), which provides that, for returns due after July 30, 1996 (determined without regard to extensions), a return made under section 6020(b) shall be treated as a return filed by the taxpayer for purposes of determining the amount of the additions to tax under section 6651(a)(2) and (a)(3). Absent the existence of a return under section 6020(b), the addition to tax under section 6651(a)(2) does not apply to a nonfiler.

In *Cabirac* v. *Commissioner*, 120 T.C. 163 (2003), *aff'd in an unpublished opinion,* No. 03–3157 (3rd Cir. Feb. 10, 2004), and *Spurlock* v. *Commissioner*, T.C. Memo. 2003–124, the Tax Court found that the Service did not establish that it had prepared and signed a return in accordance with section 6020(b). In *Spurlock,* the Tax Court held that a return for section 6020(b) purposes must be subscribed, contain sufficient information from which to compute the taxpayer's tax liability, and the return and any attachments must ''purport to be a return.'' *Spurlock*, slip op. at 27.

These temporary regulations provide that a document (or set of documents) signed by an authorized internal revenue officer or employee is a return under section 6020(b) if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and the document (or set of documents) purports to be a return under section 6020(b). A Form 13496, ''IRC Section 6020(b) Certification,'' or any other form that an authorized internal revenue officer or employee signs and uses to identify a document (or set of documents) containing the information set forth above as a section 6020(b) return, and the documents identified, constitute a valid section 6020(b) return.

Further, because the Service prepares and signs section 6020(b) returns both by hand and through automated means, these regulations provide that a name or title of an internal revenue officer or employee appearing upon a return made in accordance with section 6020(b) is sufficient as a subscription by that officer or employee to adopt the document as a return for the taxpayer without regard to whether the name or title is handwritten, stamped, typed, printed, or otherwise mechanically affixed to the document. The document or set of documents and subscription may be in written or electronic form.

These temporary regulations do not alter the method for the preparation of returns under section 6020(a) as provided in TD 6498. Under section 6020(a), if the taxpayer consents to disclose necessary information, the Service may prepare a return on behalf of a taxpayer, and if the taxpayer signs the return, the Service will receive it as the taxpayer's return.

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 also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal author of these regulations is Tracey B. Leibowitz, of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

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

§ 301.6020–1 [Removed]

■ **Par. 2.** Section 301.6020–1 is removed.

■ **Par. 3.** Section 301.6020–1T is added to read as follows:

§ 301.6020–1T Returns prepared or executed by the Commissioner or other internal revenue officers (temporary).

(a) *Preparation of returns*—(1) *In general.* If any person required by the Code or by the regulations prescribed thereunder to make a return fails to make such return, it may be prepared by the Commissioner or other authorized internal revenue officer or employee provided such person consents to disclose all information necessary for

the preparation of such return. The return upon being signed by the person required to make it shall be received by the Commissioner as the return of such person.

(2) *Responsibility of person for whom return is prepared.* A person for whom a return is prepared in accordance with paragraph (a)(1) of this section shall for all legal purposes remain responsible for the correctness of the return to the same extent as if the return had been prepared by him.

(b) *Execution of returns*—(1) *In general.* If any person required by the Code or by the regulations prescribed thereunder to make a return (other than a declaration of estimated tax required under section 6654 or 6655) fails to make such return at the time prescribed therefor, or makes, willfully or otherwise, a false, fraudulent or frivolous return, the Commissioner or other authorized internal revenue officer or employee shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise. The Commissioner or other authorized internal revenue officer or employee may make the return by gathering information and making computations through electronic, automated or other means to make a determination of the taxpayer's tax liability.

(2) *Form of the return.* A document (or set of documents) signed by the Commissioner or other authorized internal revenue officer or employee shall be a return for a person described in paragraph (b)(1) of this section if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and the document (or set of documents) purports to be a return. A Form 13496, ''IRC Section 6020(b) Certification,'' or any other form that an authorized internal revenue officer or employee signs and uses to identify a set of documents containing the information set forth above as a section 6020(b) return, and the documents identified, constitute a return under section 6020(b). A return may be signed by the name or title of an internal revenue officer or employee being handwritten, stamped, typed, printed or otherwise mechanically affixed to the return, so long as that name or title was placed on the document to signify that the internal revenue officer or employee adopted the document as a return for the taxpayer. The document and signature may be in written or electronic form.

(3) *Status of returns.* Any return made in accordance with paragraph (b)(1) of this section and signed by the Commissioner or other authorized internal revenue officer or employee shall be prima facie good and sufficient for all legal purposes. Furthermore, the return shall be treated as the return filed by the taxpayer for purposes of determining the amount of the addition to tax under section 6651(a)(2) and (3).

(4) *Deficiency procedures.* For deficiency procedures in the case of income, estate, and gift taxes, see sections 6211 to 6216, inclusive, and §§ 301.6211–1 to 301.6215–1, inclusive.

(5) *Employment status procedures.* For pre-assessment procedures in employment taxes cases involving worker classification, see section 7436 (proceedings for determination of employment status).

(6) *Examples.* The application of this paragraph (b) is illustrated by the following examples:

Example 1. Individual A, a calendar-year taxpayer, fails to file his 2003 return. Employee X, a Service employee, opens an examination related to A's 2003 taxable year. At the end of the examination, X completes a Form 13496 and attaches to it the documents listed on the form. Those documents explain examination changes and provide sufficient information to compute A's tax liability. The Form 13496 provides that the Service employee identified on the Form certifies that the attached pages constitute a return under section 6020(b). When X signs the certification package, the package constitutes a return under paragraph (b) of this section because the package identifies A by name, contains A's taxpayer identifying number (TIN), has sufficient information to compute A's tax liability, and contains a statement stating that it constitutes a return under section 6020(b). In addition, the Service shall determine the amount of the additions to tax under section 6651(a)(2) by treating the section 6020(b) return as the return filed by the taxpayer. Likewise, the Service shall determine the amount of any addition to tax under section 6651(a)(3), which arises only after notice and demand for payment, by treating the section 6020(b) return as the return filed by the taxpayer.

Example 2. Same facts as in *Example 1*, except that, after performing the examination, X does not compile any examination documents together as a related set of documents. X also does not sign and complete the Form 13496 nor associate the forms explaining examination changes with any other document. Because X did not sign any document stating that it constitutes a return under section 6020(b) and the documents otherwise do not purport to be a section 6020(b) return, the documents do not constitute a return under section 6020(b). Therefore, the Service cannot determine the section 6651(a)(2) addition to tax against nonfiler A for A's 2003 taxable year on the basis of those documents.

Example 3. Individual C, a calendar-year taxpayer, fails to file his 2003 return. The Service determines through its automated internal matching programs that C received reportable income and failed to file a return. The Service, again through its automated systems, generates a Letter 2566, ''30 Day Proposed Assessment (SFR–01) 910 SC/CG.'' This letter contains C's name, TIN, and has sufficient information to compute C's tax liability. Contemporaneous with the creation of the Letter 2566, the Service, through its automated system, electronically creates and stores a certification stating that the electronic data contained as part of C's account constitutes a valid return under section 6020(b) as of that date. Further, the electronic data includes the signature of the Service employee authorized to sign the section 6020(b) return upon its creation. Although the signature is stored electronically, it can appear as a printed name when the Service requests a paper copy of the certification. The electronically created information, signature, and certification is a return under section 6020(b). The Service will treat that return as the return filed by the taxpayer in determining the amount of the section 6651(a)(2) addition to tax with respect to C's 2003 taxable year. Likewise, the Service shall determine the amount of any addition to tax under section 6651(a)(3), which arises only after notice and demand for payment, by treating the section 6020(b) return as the return filed by the taxpayer.

Example 4. Corporation M, a quarterly taxpayer, fails to file a Form 941, ''Employer's Quarterly Federal Tax Return,'' for the second quarter of 2004. Q, a Service employee authorized to sign returns under section 6020(b), prepares a Form 941 by hand, stating Corporation M's name, address, and TIN. Q completes the Form 941 by entering line item amounts, including the tax due, and then signs the document. The Form 941 that Q prepared and signed constitutes a section 6020(b) return because the Form 941 purports to be a return under section 6020(b), the form contains M's name and TIN, and it includes sufficient information to compute M's tax liability for the second quarter of 2004.

(c) *Cross references*—(1) For provisions that a return executed by the Commissioner or other authorized internal revenue officer or employee will not start the running of the period of limitations on assessment and collection, see section 6501(b)(3) and § 301.6501(b)–1(e).

(2) For determining the period of limitations on collection after assessment of a liability on a return executed by the Commissioner or other authorized internal revenue officer or employee, see section 6502 and § 301.6502–1.

(3) For additions to the tax and additional amounts for failure to file returns, see sections 6651 and § 301.6651–1, and section 6652 and § 301.6652–1, respectively.

(4) For additions to the tax for failure to pay tax, see section 6651 and § 301.6651–1.

(5) For criminal penalties for willful failure to make returns, see sections 7201, 7202, and 7203.

(6) For criminal penalties for willfully making false or fraudulent returns, see sections 7206 and 7207.

(7) For civil penalties for filing frivolous income tax returns, see section 6702.

(8) For authority to examine books and witnesses, see section 7602 and § 301.7602–1.

(d) *Effective date.* This section applies to returns prepared under section 6020 after July 18, 2005. The applicability of this section expires on July 16, 2008.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: July 12, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary (Tax Policy).

[FR Doc. 05–14086 Filed 7–15–05; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–DE–0001; FRL–7939–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Ambient Air Quality Standard for Ozone and Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Delaware State Implementation Plan (SIP). The revision consists of modifications to the ambient air quality standards for ozone and fine particulate matter. EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on September 16, 2005, without further notice, unless EPA receives adverse written comment by August 17, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–DE–0001 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.dave@epa.gov.*

D. Mail: R03–OAR–2005–DE–0001, David Campbell, Air Quality Planning Branch, mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–DE–0001. 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.docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 2003, the State of Delaware submitted a formal revision to its SIP. The SIP revision consists of an amendment which includes the revised ambient air quality standards for ozone and particulate matter. EPA promulgated the new, more stringent, national ambient quality standards (NAAQS) for ozone and fine particulate matter on July 18, 1997, 62 FR 38894 and 62 FR 38711, respectively.

In 1997, EPA adopted an 8-hour ozone NAAQS with a level of 0.08 parts per million (ppm) to provide greater protection to public health than the previous standard of 0.12 ppm averaged over a 1-hour block of time. At the same time, EPA established a new standard for fine particulate matter ($PM_{2.5}$) that applies to particles 2.5 microns in diameter or less.

II. Summary of SIP Revision

Delaware's revision incorporates the 1997 Federal 8-hour ozone and $PM_{2.5}$ standards into Section 6, of Regulation 3, of the Delaware Regulations Governing the Control of Air Pollution. The new ozone standard incorporated in this SIP revision is the average of the fourth highest daily maximum 8-hour average ozone concentration that is less than or equal to 0.08 ppm, averaged over three consecutive years. In addition, the SIP revision adds a new PM 2.5 ambient air quality standard. The standards for $PM_{2.5}$ incorporated in this SIP revision are 65 micrograms per cubic meter based on a 24-hour average concentration and 15.0 micrograms per cubic meter annual arithmetic mean concentration. Compliance with the new 8-hour standard and fine particulate matter standards are determined in a manner identical to the

NAAQS as defined at 40 CFR part 50. It should be noted that Delaware has not made any revisions to the existing standards for ozone (1-hour standard) or particulate matter (PM_{10}).

III. Final Action

EPA is approving Delaware's SIP revision to incorporate the 8-hour ambient air quality standards for ozone and fine particle matter. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on September 16, 2005, without further notice unless EPA receives adverse comment by August 17, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

B. Submission to Congress and the Comptroller General

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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 16, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve Delaware's 8-hour ozone and fine particulate matter ambient air quality standards may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 8, 2005.

Richard J. Kampf,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by adding an entry for Regulation 1, Section 2 after the existing entry, and revising the entries for Regulation 3, Sections 1, 6, and 11 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA—APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Regulation 1 Definitions and Administrative Principles				
* *	*	*	*	* *
Section 2	Definitions	2/11/2003	7/18/05 [Insert page number where the document begins]	Added definition of PM2.5.
* *	*	*	*	* *
Regulation 3 Ambient Air Quality Standards				
Section 1	General provisions	2/11/2003	7/18/05 [Insert page number where the document begins]	Addition of section 1.6.j.
* *	*	*	*	* *
Section 6	Ozone	2/11/2003	7/18/05 [Insert page number where the document begins]	Addition to section 6.1—"This standard shall be applicable to New Castle and Kent Counties." Addition of section 6.2.
* *	*	*	*	* *
Section 11	PM10 and PM2.5 Particulates	2/11/2003	7/18/05 [Insert page number where the document begins]	Section title added "and PM2.5" Addition of sections 11.2.a. and 11.2.b.
* *	*	*	*	* *

* * * * *

[FR Doc. 05–13987 Filed 7–15–05; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1506

Other Requirements of NEPA

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Final rule.

SUMMARY: Change existing US postal address at 40 CFR 1506.9 to update and add second address to facilitate deliveries made in-person or by commercial express mail service.

DATES: Effective July 18, 2005.

ADDRESSES: Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Telephone: (202) 395–7421.

SUPPLEMENTARY INFORMATION: The address in the Filing requirements section at 40 CFR 1506.9 has been changed and an alternative address has been added. The address change is an update. The alternative address has been added to facilitate deliveries made in-person or by commercial express mail services, including Federal Express or UPS. The language in all other sections of Part 1506 remains the same.

List of Subjects in 40 CFR 1506

Environmental impact statements.

■ For the reasons set forth in the preamble, Part 1506 of Title 40 of the Code of Federal Regulations is amended to read as follows:

PART 1506—OTHER REQUIREMENTS OF NEPA

■ 1. The authority citation for Part 1506 continues to read as follows:

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

■ 2. Revise § 1506.9 to read as follows:

§ 1506.9 Filing requirements.

(a) Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Mail Code 2252–A, Room 7220, 1200 Pennsylvania Ave., NW., Washington, DC 20460. This address is for deliveries by US Postal Service (including USPS Express Mail).

(b) For deliveries in-person or by commercial express mail services, including Federal Express or UPS, the correct address is: US Environmental Protection Agency, Office of Federal Activities, EIS Filing Section, Ariel Rios Building (South Oval Lobby), Room 7220, 1200 Pennsylvania Avenue, NW., Washington, DC 20004.

(c) Statements shall be filed with the EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10.

Dated: July 12, 2005.

Dinah Bear,

General Counsel, Council on Environmental Quality.

[FR Doc. 05–14016 Filed 7–15–05; 8:45 am]

BILLING CODE 3125–01–M

OFFICE OF PERSONNEL MANAGEMENT

48 CFR Parts 2101, 2102, 2103, 2104, 2105, 2106, 2109, 2110, 2114, 2115, 2116, 2131, 2132, 2137, 2144, 2146, 2149, and 2152

RIN 3206–AI65

Federal Employees' Group Life Insurance; Federal Acquisition Regulation

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to amend the Federal Employees' Group Life Insurance (FEGLI) Acquisition Regulation. The regulation incorporates changes in administrative policy and practices and makes clarifying language changes.

DATES: Effective August 17, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, first call (1–888) 801–7210; then at the prompt, enter (202) 606–1461.

SUPPLEMENTARY INFORMATION: On October 4, 2004, OPM published a proposed rule in the **Federal Register** (69 FR 59166) making several changes to the Life Insurance Federal Acquisition Regulation (LIFAR), 48 CFR chapter 21, which identifies basic and significant acquisition policies that are unique to the FEGLI Program. The proposed regulations explained changes in the FEGLI Program's policies, updated Federal Acquisition Regulation (FAR) changes, and made clarifying changes to the language.

We did not receive any comments on the proposed regulation. We are therefore issuing the final regulation without making any changes.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the Federal Life Insurance Contractor.

List of Subjects in 48 CFR Parts 2101, 2102, 2103, 2104, 2105, 2106, 2109, 2110, 2114, 2115, 2116, 2131, 2132, 2137, 2144, 2146, 2149, and 2152

Advertising, Government employees, Government procurement, Life insurance.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, OPM is amending 48 CFR chapter 21, as follows:

CHAPTER 21—OFFICE OF PERSONNEL MANAGEMENT, FEDERAL EMPLOYEES' GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

■ 1. The authority citation for 48 CFR parts 2101, 2102, 2103, 2104, 2109, 2110, 2115, 2131, 2132, 2137, 2144, 2146, 2149, and 2152 continues to read as follows:

Authority: 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 2. The authority citation for 48 CFR parts 2105, 2106, and 2114 continues to read as follows:

Authority: 5 U.S.C. 8709; 40 U.S.C. 486(c); 48 CFR 1.301.

■ 3. The authority citation for 48 CFR part 2116 continues to read as follows:

Authority: 5 U.S.C. 8709; 5 U.S.C. 8716; 40 U.S.C. 486(c); 48 CFR 1.301.

PART 2101—FEDERAL ACQUISITION REGULATIONS SYSTEM

Subpart 2101.1—Purpose, Authority, Issuance

■ 4. In section 2101.102 revise paragraph (b) to read as follows:

2101.102 Authority.

* * * * *

(b) The LIFAR does not replace or incorporate regulations found at 5 CFR part 870, which provide the substantive policy guidance for administration of the FEGLI Program under 5 U.S.C. chapter 87. The following is the order of precedence in interpreting a contract provision under the FEGLI Program:

(1) 5 U.S.C. chapter 87.

(2) 5 CFR part 870.

(3) 48 CFR chapters 1 and 21.

(4) The FEGLI Program contract.

Subpart 2101.3—Agency Acquisition Regulations

■ 5. In section 2101.301 revise paragraph (b) to read as follows:

2101.301 Policy.

* * * * *

(b) OPM may issue internal procedures, instructions, directives, and guides to clarify or implement the LIFAR within OPM. Clarifying or implementing procedures, instructions, directives, and guides issued pursuant to this section of the LIFAR must:

(1) Be consistent with the policies and procedures contained in this chapter as implemented and supplemented from time to time; and

(2) Follow the format, arrangement, and numbering system of this chapter to the extent practicable.

■ 6. In section 2101.370 add paragraph (e) to read as follows:

2101.370 Effective date of LIFAR amendments.

* * * * *

(e) OPM will not initiate any changes to the LIFAR during a continuity of services period, as discussed in section 2152.237–70 of this chapter.

PART 2102—DEFINITIONS OF WORDS AND TERMS

Subpart 2102.1—Definitions

■ 7. Revise section 2102.101 to read as follows:

2102.101 Definitions.

In this chapter, unless otherwise indicated, the following terms have the meaning set forth in this subpart.

Contract means a policy or policies of group life and accidental death and dismemberment insurance to provide the benefits specified by 5 U.S.C. chapter 87.

Contractor means an insurance company contracted to provide the benefits specified by 5 U.S.C. chapter 87.

Contract price means premium.

Contract year means October 1 through September 30. Also referred to as contract term.

Director means the Director of the Office of Personnel Management.

Employees' Life Insurance Fund means the trust fund established under 5 U.S.C. 8714.

Enrollee means the insured, or, where applicable, the assignee.

FEGLI Program means the Federal Employees' Group Life Insurance Program.

Fixed price with limited cost redetermination plus fixed fee contract means a contract which provides for:

(1) A fixed price during the contract year with a cost element that is adjusted at the end of the contract term based on costs incurred under the contract; and

(2) A profit or fee that is fixed at the beginning of the contract term. The amount of adjustment for costs is limited to the amount in the Employees' Life Insurance Fund. The fee will be in the form of either a risk charge or a service charge.

Grace period means 31 days from and including the payment due date of the first business day of the month.

Insurance company, as provided in 5 U.S.C. 8709, means a company licensed to transact life and accidental death and dismemberment insurance under the

laws of all the States and the District of Columbia. It must have in effect, on the most recent December 31 for which information is available to the Office of Personnel Management, an amount of employee group life insurance equal to at least 1 percent of the total amount of employee group life insurance in the United States in all life insurance companies.

OPM means the United States Office of Personnel Management.

Premium means an amount intended to cover the estimated annual benefits and administrative costs plus a fixed service or risk charge, made available to the Contractor in 12 equal installments. At the end of the contract year, a reconciliation of premiums, benefits, and other costs is performed as a limited cost redetermination.

Reinsurer means a company that reinsures portions of the total amount of insurance under the contract as specified in 5 U.S.C. 8710 and is not an agent or representative of the Contractor.

Subcontract means a contract entered into by any subcontractor that furnishes supplies or services for performance of a prime contract under the FEGLI Program. Except for the purpose of FAR subpart 22.8—Equal Employment Opportunity, the term subcontract does not include a contract with a reinsurer under the FEGLI Program.

Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor under the FEGLI Program contract. Except for the purpose of FAR subpart 22.8—Equal Employment Opportunity, the term subcontractor does not include reinsurers under the FEGLI Program.

PART 2103—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2103.5—Other Improper Business Practices

■ 8. In section 2103.570 revise paragraphs (a) and (b) to read as follows:

2103.570 Misleading, deceptive, or unfair advertising.

(a) OPM, or the Contractor with the approval of OPM, makes available to Federal employees a booklet describing the provisions of the FEGLI Program, which includes information about eligibility, enrollment, and general procedures. The booklet, along with valid election documents, serves as certification of the employee's coverage under the FEGLI Program. Any marketing/advertising directed specifically at Federal employees and life insurance contacts with Federal employees for the purpose of selling FEGLI Program coverage must be approved by OPM in advance.

(b) The Contractor is prohibited from making incomplete and/or incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to those of the FEGLI Program. The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program will be truthful and not misleading and will present an accurate statement of FEGLI Program benefits. The Contractor will use reasonable efforts to assure that agents selling its other products are aware of and abide by this prohibition.

* * * * *

PART 2104—ADMINISTRATIVE MATTERS

■ 9. Add subpart 2104.9 consisting of section 2104.9001 to read as follows:

Subpart 2104.9—Taxpayer Identification Number

Sec.
2104.9001 Contract clause.

2104.9001 Contract clause.

The clause at 2152.204–70 of this chapter must be inserted in all FEGLI Program contracts.

PART 2105—PUBLICIZING CONTRACT ACTIONS

Subpart 2105.70—Applicability

■ 10. Revise section 2105.7001 to read as follows:

2105.7001 Applicability.

FAR part 5 has no practical application to the FEGLI Program because the requirements for eligible contractors (*i.e.*, qualified life insurance companies) are stated in 5 U.S.C. 8709.

PART 2106—COMPETITION REQUIREMENTS

Subpart 2106.70—Applicability

■ 11. Revise section 2106.7001 to read as follows:

2106.7001 Applicability.

FAR part 6 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

PART 2109—CONTRACTOR QUALIFICATIONS

Subpart 2109.70—Minimum Standards for FEGLI Program Contractors

■ 12. In section 2109.7001 revise paragraphs (a), (f), and (g) to read as follows:

2109.7001 Minimum standards for FEGLI Program Contractors.

(a) The Contractor must meet the requirements of chapter 87 of title 5, United States Code; part 870 of title 5, Code of Federal Regulations; chapter 1 of title 48, Code of Federal Regulations; and the standards in this subpart. The Contractor must continue to meet these and the following statutory and regulatory requirements while under contract with OPM. Failure to meet these requirements and standards is cause for OPM's termination of the contract in accordance with part 2149 of this chapter.

* * * * *

(f) The Contractor agrees to enter into annual premium rate redeterminations with OPM.

(g) The Contractor must furnish such reasonable reports as OPM determines are necessary to administer the FEGLI Program. The cost of preparation of such reports will be considered an allowable expense within the administrative expense ceiling defined in section 2152.231–70 of this chapter.

* * * * *

PART 2110—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Subpart 2110.70—Contract Specifications

■ 13. Revise section 2110.7002 to read as follows:

2110.7002 Contractor investment of FEGLI Program funds.

(a) The Contractor is required to invest and reinvest all FEGLI Program funds on hand, including any attributable to the special contingency reserve (as used in 5 U.S.C. 8712), until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income. However, the Contractor will not be responsible for any actions taken at the direction of OPM.

(b) The Contractor is required to credit income earned from its investment of FEGLI Program funds to the FEGLI Program. Thus, the Contractor must be able to allocate

investment income to the FEGLI Program in an appropriate manner. If the Contractor fails to invest funds on hand, properly allocate investment income, or credit any income due to the contract, for whatever reason, it must return or credit any investment income lost to OPM or the FEGLI Program, retroactive to the date that such funds should have been originally invested, allocated, or credited in accordance with the clause at 2152.210–70 of this chapter.

PART 2114—SEALED BIDDING

Subpart 2114.70—Applicability

■ 14. Revise section 2114.7001 to read as follows:

2114.7001 Applicability.

FAR part 14 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

PART 2115—CONTRACTING BY NEGOTIATION

2115.106–270 [Redesignated as 2115.071]

■ 15. Redesignate section 2115.106–270 as section 2115.071 and revise the title to read as ''Specific retention periods: Contract clause.''

2115.170 [Redesignated as 2115.070]

■ 16. Redesignate section 2115.170 as section 2115.070.

■ 17. Revise the title of subpart 2115.1, remove section 2115.106, and add a new section 2115.170 to read as follows:

Subpart 2115.1—Source Selection Processes and Techniques

2115.170 Applicability.

FAR subpart 15.1 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and LIFAR 2115.370.

■ 18. Redesignate subpart 2115.4 as subpart 2115.2 and revise the title, redesignate section 2115.401 as section 2115.270, and revise paragraphs (a) and (c) to read as follows:

Subpart 2115.2—Solicitation and Receipt of Proposals and Information

2115.270 Applicability.

(a) FAR subpart 15.2 has no practical application to the FEGLI Program because 5 U.S.C. chapter 87 exempts the FEGLI Program from competitive bidding.

* * * * *

(c) Eligible contractors (*i.e.*, qualified life insurance companies) are identified in accordance with 5 U.S.C. 8709. Prospective contractors voluntarily come forth in accordance with procedures provided in section 2115.370.

* * * * *

■ 19. Redesignate subpart 2115.6 as subpart 2115.3, and redesignate section 2115.602 as section 2115.370 and revise the introductory paragraph to read as follows:

Subpart 2115.3—Source Selection

2115.370 Applicability.

FAR subpart 15.3 has no practical application to the FEGLI Program because prospective contractors (insurance companies) are considered for inclusion in the FEGLI Program in accordance with criteria provided in 5 U.S.C. chapter 87, LIFAR 2109.7001, and the following:

* * * * *

■ 20. Redesignate subpart 2115.8 as subpart 2115.4 and revise the title, and redesignate section 2115.802 as section 2115.402 and revise it to read as follows:

Subpart 2115.4—Contract Pricing

2115.402 Policy.

Pricing of FEGLI Program premium rates is governed by 5 U.S.C. 8707, 8708, 8711, 8714a, 8714b, and 8714c. FAR subpart 15.4 will be implemented by applying cost analysis policies and procedures. To the extent that reasonable or good faith actuarial estimates are used for pricing, such estimates will be deemed acceptable and, if inaccurate, will not constitute defective pricing.

■ 21. Redesignate section 2115.902 as section 2115.404–70, revise the title, and revise paragraph (b)(2) to read as follows:

2115.404–70 Profit.

* * * * *

(b) * * *

(2) Once agreement to relinquish the risk charge is made, the agreement may not be cancelled unless OPM and the Contractor mutually agree to reinstitute payment of a risk charge; or unless the Fund balance falls below the level defined in 2115.404–70(a) and 30 days' notice of cancellation is provided; or unless the Contractor or OPM provides notice of cancellation for any reason 1 year prior to the date cancellation is sought.

* * * * *

■ 22. Redesignate section 2115.905 as section 2115.404–71 and revise it to read as follows:

2115.404–71 Profit analysis factors.

(a) The OPM Contracting Officer will apply a weighted guidelines method when developing the prenegotiation objective (service charge) for the FEGLI Program contract. In accordance with the factors defined in FAR 15.404–4(d), OPM will apply the appropriate weights derived from the ranges specified in paragraph (b) of this section and will determine the prenegotiation objective based on the total dollar amount of the Contractor's Basic and Option C (family optional insurance) claims paid in the previous contract year.

(1) *Contractor performance*. OPM will consider such elements as the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, effectiveness of internal controls systems in place, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress as measures of economical and efficient contract performance. This factor will be judged apart from the Contractor's *basic* responsibility for contract compliance and will be a measure of the extent and nature of the Contractor's contribution to the FEGLI Program through the application of managerial expertise and effort. Evidence of effective contract performance will receive a plus weight, and poor performance or failure to comply with contract terms and conditions a zero weight. Innovations of benefit to the FEGLI Program will generally receive a plus weight; documented inattention or indifference to effective operations, a zero weight.

(2) *Contract cost risk*. OPM will evaluate the Contractor's risk annually in relation to the amount in the Employees' Life Insurance Fund and will evaluate this factor accordingly.

(3) *Federal socioeconomic programs*. OPM will consider documented evidence of successful Contractor-initiated efforts to support such Federal socioeconomic programs as drug and substance abuse deterrents and other concerns of the type enumerated in FAR 15.404–4(d)(1)(iii) as a factor in negotiating profit. This factor will be related to the quality of the Contractor's policies and procedures and the extent of exceptional effort or achievement demonstrated. Evidence of effective support of Federal socioeconomic programs will result in a plus weight; indifference to Federal socioeconomic programs will result in a zero weight; and only deliberate failure to provide

opportunities to persons and organizations that would benefit from these programs will result in a negative weight.

(4) *Capital investments.* This factor is generally not applicable to FEGLI Program contracts because facilities capital cost of money may be an allowable administrative expense. Generally, this factor will be given a weight of zero. However, special purpose facilities or investment costs of direct benefit to the FEGLI Program that are not recoverable as allowable or allocable administrative expenses may be taken into account in assigning a plus weight.

(5) *Cost control.* This factor is based on the Contractor's previously demonstrated ability to perform effectively and economically. In addition, consideration will be given to measures taken by the Contractor that result in productivity improvements and other cost containment accomplishments that will be of future benefit to the FEGLI Program. Examples are containment of costs associated with processing claims; success at preventing waste, loss, unauthorized use, or misappropriation of FEGLI Program assets; and success at limiting and recovering erroneous benefit payments.

(6) *Independent development.* Consideration will be given to independent Contractor-initiated efforts, such as the development of a unique and enhanced customer support system, that are of demonstrated value to the FEGLI Program and for which developmental costs have not been recovered directly or indirectly through allowable or allocable administrative expenses. This factor will be used to provide additional profit opportunities based upon an assessment of the Contractor's investment and risk in developing techniques, methods, practices, etc., having viability to the Program at large. Improvements and innovations recognized and rewarded under any other profit factor cannot be considered.

(7) *Transitional services.* This factor is based on the Contractor's performance of transitional activities during a continuity of services period as described in the clause at 2152.237–70 of this chapter. These are any activities apart from the normal servicing of the contract during an active contract term. Other than for a transitional period, the weight applied to this factor for any active contract term is zero.

(b) The weight ranges for each factor to be used in the weighted guidelines approach are set forth in the following table:

Profit factor	Weight ranges
1. Contractor performance	0 to +.0005.
2. Contract cost risk	+.000001 to +.00001.
3. Federal socioeconomic programs	−.00003 to +.00003.
4. Capital investment	0 to +.00001.
5. Cost control	−.0002 to +.0002.
6. Independent development	0 to +.00003.
7. Transitional services	0 to +.0007.

Subpart 2115.9—[Removed]

■ 23. Remove subpart 2115.9.

PART 2116—TYPES OF CONTRACTS

Subpart 2116.2—Fixed Price Contracts

■ 24. Revise section 2116.270 to read as follows:

2116.270 FEGLI Program contracts.

FEGLI Program contracts are fixed price with limited cost redetermination plus fixed fee. The premium paid to the Contractor is mutually agreed upon by OPM and the Contractor and is based on an estimate of benefits and administrative costs, plus the fixed service or risk charge, and is determined annually. Claims costs, including benefits and administrative expenses, in excess of premiums are paid up to the amount in the Employees' Life Insurance Fund. Payment for costs exceeding the amount in the Fund are the responsibility of the Contractor and reinsurers. The fee is fixed at the inception of each contract year. The fee does not vary with the actual costs but may be adjusted as a result of changes in the work to be performed under the contract. The fee is in the form of either a risk charge or a service charge.

(a) *Risk charge.* The risk charge will be determined as prescribed in 5 U.S.C. 8711(d) and section 2115.404–70 of this chapter. It will consist of a negotiated amount which will reflect the risk assumed by the Contractor and the reinsurers and may be adjusted as a result of increased or decreased risk under the contract. When the applicable fee is a risk charge, no service charge will be paid for the same period of time.

(b) *Service charge.* The amount of the service charge will be determined using a weighted guidelines structured approach in accordance with section 2115.404–71 of this chapter and negotiated with the Contractor at the beginning of the contract term. When the applicable fee is a service charge, no risk charge will be paid for the same period of time.

PART 2131—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2131.1—Applicability

■ 25. Revise section 2131.109 to read as follows:

2131.109 Advance agreements.

FAR 31.109 is applicable to FEGLI Program contracts, except that precontract costs and nonrecurring costs that exceed $100,000 will not be allowed in the absence of an advance agreement between OPM and any potential FEGLI Contractor.

Subpart 2131.2—Contracts With Commercial Organizations

■ 26. Revise section 2131.203 to read as follows:

2131.203 Indirect costs.

The provisions of FAR 31.203 apply to the allocation of indirect costs.

■ 27. Revise section 2131.205–32 to read as follows:

2131.205–32 Precontract costs.

Precontract costs will be allowable in accordance with FAR part 31, but precontract costs that exceed $100,000 will not be allowable except to the extent allowable under an advance agreement negotiated in accordance with section 2131.109 of this chapter.

■ 28. Revise section 2131.205–38 to read as follows:

2131.205–38 Selling costs.

Selling costs are not allowable costs to FEGLI contracts except to the extent that they are attributable to conducting contract negotiations with the Government and for liaison activities involving ongoing contract administration, including the conduct of

informational and enrollment activities as directed or approved by the Contracting Officer.

PART 2132—CONTRACT FINANCING

Subpart 2132.1—General

■ 29. Revise section 2132.170 to read as follows:

2132.170 Recurring premium payments to Contractors.

(a) OPM will make payments on a letter of credit (LOC) basis. OPM and the Contractor will concur on an estimate of benefits and administrative costs plus the fixed service or risk charge for the forthcoming contract year, as specified in the contract. The annual premium to the Contractor, based on this estimate, will be credited to the Contractor's LOC account in 12 equal monthly installments due on the first business day of each month and available for drawdown. OPM will credit the Contractor's LOC account for the December payment no later than the last business day of each calendar year. Following the close of the contract year, a reconciliation of premiums, benefits, and other costs will be performed as a limited cost redetermination. In addition, interest distribution payments will be made available for Contractor drawdown from the LOC account. The Contractor will use the LOC account in accordance with guidelines issued by OPM.

(b) Withdrawals from the LOC account for benefit costs of $5,000 or more will be made on a claims-paid basis. Withdrawals from the LOC account for benefit costs of less than $5,000 and other FEGLI Program disbursements will be made on a checks-presented basis. Under a checks-presented basis, drawdown on the LOC is delayed until the checks issued for FEGLI Program disbursements are presented to the Contractor's bank for payment.

(c) Nothing in this chapter will affect the ability of the Contractor to hold the special contingency reserve established and maintained in accordance with the terms of 5 U.S.C. 8712.

Subpart 2132.7—Contract Funding

■ 30. Revise section 2132.771 to read as follows:

2132.771 Non-commingling of FEGLI Program funds.

(a) FEGLI Program funds must be maintained in such a manner as to be separately identifiable from other assets of the Contractor. Cash and investment balances reported on the FEGLI Program Annual Financial Report must be supported by the Contractor's books and records.

(b) This requirement may be modified by the Contracting Officer in accordance with the clause at 2152.232–71 of this chapter when adequate accounting and other controls are in effect. If the requirement is modified, such modification will remain in effect until rescinded by OPM.

PART 2137—SERVICE CONTRACTING

Subpart 2137.1—Service Contracts—General

■ 31. Revise section 2137.102 to read as follows:

2137.102 Policy.

(a) The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated, unless the termination occurs as a result of OPM's failure to pay premiums on a timely basis.

(b) The Contractor will be reimbursed for all reasonable phase-in and phase-out costs (*i.e.*, costs incurred within the agreed-upon period after contract termination that result from phase-in and phase-out operations). The Contractor also will receive a risk or service charge for the full period after contract termination during which services are continued, not to exceed a pro rata portion of the risk or service charge for the final contract year. In addition, OPM will pay the Contractor an incentive amount, not to exceed the pro rata risk or service charge for the continuity of services period (LIFAR 2152.237–70), based on exceptional performance during the transition period to a new Contractor. The Contracting Officer will use the weighted guidelines method described in 2115.404–71 of this chapter in determining the incentive amount. The amount of the risk or service charge will be based upon the accurate and timely processing of benefit claims, the volume and validity of customer service complaints, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, insured individuals, beneficiaries, and Congress.

PART 2144—SUBCONTRACTING POLICIES AND PROCEDURES

Subpart 2144.1—General

■ 32. Revise section 2144.102 to read as follows:

2144.102 Policy.

For all FEGLI Program contracts, the Contracting Officer's advance approval will be required on subcontracts or modifications to subcontracts when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $550,000 and is at least 25 percent of the total cost of the subcontract.

PART 2146—QUALITY ASSURANCE

Subpart 2146.2—Contract Quality Requirements

■ 33. In section 2146.201 revise paragraph (b) to read as follows:

2146.201 General.

* * * * *

(b) OPM will make an initial evaluation of the Contractor's system of internal controls under the quality assurance program required by 2146.270 of this chapter and will acknowledge in writing whether or not the system is consistent with the requirements set forth in this subpart. After the initial review, subsequent periodic reviews may be limited to changes in the Contractor's internal control guidelines. However, a limited review does not diminish the Contractor's obligation to apply the full internal control system.

■ 34. In section 2146.270 revise paragraph (b) to read as follows:

2146.270 FEGLI Program quality assurance requirements.

* * * * *

(b) The Contractor must prepare overpayment recovery guidelines to include a system of internal controls.

* * * * *

PART 2149—TERMINATION OF CONTRACTS

■ 35. Revise section 2149.002 to read as follows:

2149.002 Applicability.

(a) *Termination.* (1) Termination of FEGLI Program contracts is controlled by 5 U.S.C. 8709(c) and this chapter. The procedures for termination of FEGLI Program contracts are contained in FAR part 49. For the purpose of this part, terminate means to discontinue as used in 5 U.S.C. 8709(c).

(2) A life insurance contract entered into by OPM may be terminated by OPM at any time for default by the Contractor in accordance with the provisions of FAR part 49 and FAR 52.249–8. A life insurance contract entered into by OPM may be terminated by the Contractor at the end of the grace period, after default for nonpayment by OPM. Notwithstanding the preceding sentence, the Contractor will allow OPM an additional 5 days after the end of the

grace period to make payment if the failure to make payment was inadvertent and/or due to circumstances beyond the Government's control.

(3) A life insurance contract entered into by OPM may be terminated for convenience of the Government 60 days after the Contractor's receipt of OPM's written notice to terminate.

(4) The Contractor may terminate its contract with OPM at the end of any contract year when notice of intent to terminate is given to OPM in writing at least 60 days prior to the end of the contract year (*i.e.*, no later than July 31).

(b) *Continuation of services.* The services under this contract are of vital interest to the Government and must be continued without interruption in the event the contract is terminated for the Contractor's default or OPM's convenience. Consequently, the contract termination procedures contained in this paragraph must be used in conjunction with section 2137.102 of this chapter, section 2137.110 of this chapter, and the provisions of the ''Continuity of Services'' clause at 2152.237–70 of this chapter. The Contractor is not required to continue performance subsequent to OPM's default for failure to pay premiums in accordance with the provisions of the clause at 2152.249–70(b) of this chapter.

(c) *Settlement.* The procedures for settlement of contracts after they are terminated are those contained in FAR part 49.

PART 2152—PRECONTRACT PROVISIONS AND CONTRACT CLAUSES

■ 36. In section 2152.070 revise the listing under Section and Clause Title to read as follows:

2152.070 Applicable clauses.

* * * * *

Section and Clause Title

52.202–1 Definitions
52.203–3 Gratuities
52.203–5 Covenant against Contingent Fees
52.203–6 Restrictions on Subcontractor Sales to the Government
52.203–7 Anti-Kickback Procedures
52.203–12 Limitation on Payments to Influence Certain Federal Transactions
52.209–6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment
52.215–2 Audit and Records—Negotiation
52.215–10 Price Reduction for Defective Cost or Pricing Data
52.215–12 Subcontractor Cost or Pricing Data
52.215–15 Pension Adjustments and Asset Reversions
52.215–16 Facilities Capital Cost of Money
52.215–17 Waiver of Facilities Capital Cost of Money
52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions
52.219–8 Utilization of Small Business Concerns
52.222–1 Notice to the Government of Labor Disputes
52.222–3 Convict Labor
52.222–4 Contract Work Hours and Safety Standards Act—Overtime Compensation
52.222–21 Prohibition of Segregated Facilities
52.222–22 Previous Contracts and Compliance Reports
52.222–25 Affirmative Action Compliance
52.222–26 Equal Opportunity
52.222–29 Notification of Visa Denial
52.222–35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.222–36 Affirmative Action for Workers with Disabilities
52.222–37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
52.223–6 Drug-Free Workplace
52.227–1 Authorization and Consent
52.227–2 Notice and Assistance regarding Patent and Copyright Infringement
52.228–7 Insurance—Liability to Third Persons
52.232–9 Limitation on Withholding of Payments
52.232–17 Interest
52.232–23 Assignment of Claims
52.232–33 Payment by Electronic Funds Transfer—Central Contractor Registration
52.233–1 Disputes (Alternate I)
52.242–1 Notice of Intent to Disallow Costs
52.242–3 Penalties for Unallowable Costs
52.242–13 Bankruptcy
52.244–5 Competition in Subcontracting
52.245–2 Government Property (Fixed-Price Contracts)
52.246–4 Inspection of Services—Fixed Price
52.246–25 Limitation of Liability—Services
52.247–63 Preference for U.S.-Flag Air Carriers
52.249–2 Termination for Convenience of the Government (Fixed Price)
52.249–8 Default (Fixed Price Supply and Service)
52.249–14 Excusable Delays
52.251–1 Government Supply Sources
52.252–4 Alterations in Contract
52.252–6 Authorized Deviations in Clauses

■ 37. Revise section 2152.203–70 to read as follows:

2152.203–70 Misleading, deceptive, or unfair advertising.

As prescribed in 2103.571, insert the following clause:

MISLEADING, DECEPTIVE, OR UNFAIR ADVERTISING (OCT 2005)

The Contractor agrees that any advertising material authorized and released by the Contractor which mentions the FEGLI Program must be truthful and not misleading and must present an accurate statement of FEGLI Program benefits. The Contractor is prohibited from making incomplete and/or incorrect comparisons or using disparaging or minimizing techniques to compare its other products or services to those of the FEGLI Program. The Contractor agrees to use reasonable efforts to assure that agents selling its other products are aware of and abide by this provision. The Contractor agrees to incorporate this clause in all subcontracts as defined at LIFAR 2102.101.

(End of Clause)

■ 38. Add a new section 2152.204–70 to read as follows:

2152.204–70 Taxpayer Identification Number.

As prescribed in 2104.9001, insert the following clause:

TAXPAYER IDENTIFICATION NUMBER (OCT 2005)

(a) Definitions.

Common parent, as used in this provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the Contractor is a member.

Taxpayer Identification Number (TIN), as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the Contractor in reporting income tax and other returns. The TIN is the Contractor's Social Security Number.

(b) The Contractor must submit the information required in paragraphs (d) through (f) of this clause to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. The Contractor is subject to the payment reporting requirements described in FAR 4.904. The Contractor's failure or refusal to furnish the information will result in payment being withheld until the TIN is provided.

(c) The Government may use the TIN to collect and report on any delinquent amounts arising out of the Contractor's relationship with the Government (31 U.S.C. 7701(c)(3)). The TIN provided hereunder may be matched with IRS records to verify its accuracy.

(d) Taxpayer Identification Number (TIN).

TIN: _____

(e) Type of organization.

☐ Corporate entity (tax-exempt);

☐ Other _____

(f) Common parent.

☐ Contractor is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

☐ Name and TIN of common parent:

Name _____

TIN _____

(End of Clause)

■ 39. In section 2152.210–70 revise the clause title date, and revise paragraphs (a), (c), and (d)(2) to read as follows:

2152.210–70 Investment income.

* * * * *

INVESTMENT INCOME (OCT 2005)

(a) The Contractor must invest and reinvest all FEGLI Program funds on hand until needed to discharge promptly the obligations incurred under the contract. Within the constraints of safety and liquidity of investments, the Contractor must seek to maximize investment income. However, the Contractor will not be responsible for any actions taken at the direction of OPM.

* * * * *

(c) When the Contracting Officer concludes that the Contractor failed to comply with paragraph (a) or (b) of this clause, the Contractor must pay to OPM the investment income that would have been earned, at the rate(s) specified in paragraph (d) of this clause, had it not been for the Contractor's noncompliance. *Failed to comply with paragraph (a) or (b) of this clause* means:

(1) Making any charges against the contract which are not actual, allowable, allocable, or reasonable; or

(2) Failing to credit any income due the contract and/or failing to place funds on hand, including premium payments and payments from OPM not needed to discharge promptly the obligations incurred under the contract, tax refunds, credits, deposits, investment income earned, uncashed checks, or other amounts owed OPM in income-producing investments and accounts.

(d) * * *

(2) Investment income lost by the Contractor as a result of failure to credit income due under the contract or failure to place funds on hand in income-producing investments and accounts must be paid from the date the funds should have been invested or appropriate income was not credited and will end on the earlier of:

(i) The date the amounts are returned to OPM;

(ii) The date specified by the Contracting Officer; or

(iii) The date of the Contracting Officer's final decision.

* * * * *

■ 40. In section 2152.210–71 revise the clause title date, and revise paragraphs (a)(3), (a)(5), (a)(6), (a)(11), (b), and (d) to read as follows:

2152.210–71 Notice of significant events.

* * * * *

NOTICE OF SIGNIFICANT EVENTS (OCT 2005)

(a) * * *

(3) Loss of 20 percent or more of FEGLI Program reinsurers in a contract year;

* * * * *

(5) The withdrawal of, or notice of intent to withdraw, by any State or the District of Columbia, its license to do life insurance business or any other change of life insurance status under State law;

(6) The Contractor's material default on a loan or other financial obligation;

* * * * *

(11) Any written exceptions, reservations, or qualifications expressed by the independent accounting firm (which ascribes to the standards of the American Institute of Certified Public Accountants) contracted with by the Contractor to provide an audit opinion on the annual financial report required by OPM for the FEGLI Program. Accounting firm employees must audit the report in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM.

(b) Upon learning of a significant event, OPM may institute action, in proportion to the seriousness of the event, to protect the interest of insureds, including, but not limited to—

(1) Directing the Contractor to take corrective action; or

(2) Making a downward adjustment to the weight in the ''Contractor Performance'' factor of the service charge.

* * * * *

(d) The Contractor agrees to insert this clause in any subcontract or subcontract modification when the amount of the subcontract or modification that is charged to the FEGLI Program contract exceeds $550,000 and is at least 25 percent of the total cost of the subcontract.

(End of Clause)

■ 41. Revise section 2152.215–70 to read as follows:

2152.215–70 Contractor records retention.

As prescribed in 2115.071, insert the following clause:

CONTRACTOR RECORDS RETENTION (OCT 2005)

Notwithstanding the provisions of FAR 52.215–2(f), ''Audit and Records—Negotiation,'' the Contractor must retain and make available all records applicable to a contract term that support the annual financial report for a period of 5 years after the end of the contract term to which the records relate. Claim records must be maintained for 10 years after the end of the contract term to which the claim records relate. If the Contractor chooses to maintain paper documents in electronic format, the electronic version must be an exact replica of the paper document.

(End of Clause)

■ 42. Revise section 2152.216–70 to read as follows:

2152.216–70 Fixed price with limited cost redetermination—risk charge.

As prescribed in 2116.270–1(a), insert the following clause when a risk charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—RISK CHARGE (OCT 2005)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a risk charge. OPM will pay the Contractor the risk charge as specified in a letter from the Contracting Officer.

(b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

(End of Clause)

■ 43. Revise section 2152.216–71 to read as follows:

2152.216–71 Fixed price with limited cost redetermination—service charge.

As prescribed in 2116.270–1(b), insert the following clause when a service charge is negotiated:

FIXED PRICE WITH LIMITED COST REDETERMINATION PLUS FIXED FEE CONTRACT—SERVICE CHARGE (OCT 2005)

(a) This is a fixed price with limited cost redetermination plus fixed fee contract, with the fixed fee in the form of a service charge. OPM will pay the Contractor the service charge as specified in a letter from the Contracting Officer.

(b) At the Contractor's request, OPM will furnish, during the third quarter of the current contract year, an accounting of the funds in the Employees' Life Insurance Fund as of the end of the second quarter of the contract year.

(End of Clause)

■ 44. In section 2152.224–70 revise the clause title date, and revise paragraph (a) to read as follows:

2152.224–70 Confidentiality of records.

* * * * *

CONFIDENTIALITY OF RECORDS (OCT 2005)

(a) The Contractor will use the personal data on employees and annuitants that is provided by agencies and OPM, including social security numbers, for only those routine uses stipulated for the data and published in the **Federal Register** as part of OPM's notice of systems of records.

* * * * *

■ 45. Revise section 2152.231–70 to read as follows:

2152.231–70 Accounting and allowable cost.

As prescribed in 2131.270, insert the following clause:

ACCOUNTING AND ALLOWABLE COST (OCT 2005)

(a) *Annual Financial Report.* (1) The Contractor must prepare annually a financial report summarizing the financial operations of the FEGLI Program for the previous contract year. This report will be due to OPM in accordance with a date established by OPM's requirements.

(2) The Contractor must have the most recent financial report for the FEGLI Program audited by an independent public accounting firm that ascribes to the standards of the American Institute of Certified Public Accountants. The audit must be performed in accordance with Generally Accepted Government Auditing Standards or other requirements issued by OPM. The report by the independent accounting firm on its audit must be submitted to OPM along with the annual financial report.

(3) Based on the results of either the independent audit or a Government audit, the FEGLI contract may be:

(i) Adjusted by amounts found not to constitute chargeable costs; or

(ii) Adjusted for prior overpayments or underpayments.

(b) *Definition of costs.* (1) A cost is chargeable to the contract for a contract term if it is:

(i) An actual, allowable, allocable, and reasonable cost;

(ii) Incurred with proper justification and accounting support;

(iii) Determined in accordance with subpart 31.2 of the Federal Acquisition Regulation (FAR) and subpart 2131.2 of the Federal Employees' Group Life Insurance Acquisition Regulation (LIFAR) applicable on October 1 of each year; and

(iv) Determined in accordance with the terms of this contract.

(2) In the absence of specific contract terms to the contrary, contract costs will be classified in accordance with the following criteria:

(i) *Benefits.* Claims costs consist of payments made and costs incurred (including delayed settlement interest) by the Contractor for life insurance, accidental death and dismemberment insurance, excess mortality charges, post-mortem conversion charges, and conversion policies on behalf of insured persons, less any overpayments recovered (subject to the terms of LIFAR 2131.205–3), refunds, or other credits received.

(ii)(A) *Administrative expenses.* Administrative expenses consist of chargeable costs as defined in paragraph (b)(1) of this clause incurred in the adjudication of claims or incurred in the Contractor's overall operation of the business. Unless otherwise provided in the contract, FAR, or LIFAR, administrative expenses include, but are not limited to, taxes, service charges to reinsurers, the cost of investigation and settlement of policy claims, the cost of maintaining records regarding payment of claims, and legal expenses incurred in the litigation of benefit payments. Administrative expenses exclude the expenses related to investment income in paragraph (b)(2)(iii) of this clause.

(B) *Administrative Expense Ceiling.* Each year an administrative expense ceiling for the following contract year is calculated based on the prior contract year's administrative expense ceiling, adjusted by the percentage change in the average monthly consumer Price Index for All Urban Consumers for the preceding 12 months. Administrative expenses are reimbursed up to the administrative expense ceiling or actual costs, whichever is less. Both parties will reexamine the base, including the prior year's actual expenses, at the request of either OPM or the Contractor. Within the administrative expense ceiling is a separately negotiated limit for indirect costs that may be charged against the ceiling for the contract year. The Contractor agrees to provide annually to the Contracting Officer a detailed report of direct and indirect administrative costs which form the basis for determining the limit on indirect costs for the following contract year. During a continuity of services period, OPM and the Contractor will negotiate a one-time increase in the administrative expense ceiling to cover phase-in/phase-out costs. Costs that exceed the revised ceiling must be submitted by the Contractor, in writing and in advance of their incurrence, to the Contracting Officer for approval.

(iii) *Investment income.* Investment income represents the amount earned by the Contractor after deducting chargeable investment expenses. Investment expenses are those chargeable contract costs, as defined in paragraph (b)(1) of this clause, which are attributable to the investment of FEGLI funds.

(c) *Certification of Annual Financial Report.* (1) The Contractor must certify the annual financial report in the form set forth in paragraph (c)(2) of this clause. The certificate must be signed by the chief executive officer for the Contractor's FEGLI Program operations and the chief financial officer for the Contractor's FEGLI Program operations and must be returned with the annual financial report.

(2) The certification required must be in the following form:

CERTIFICATION OF ANNUAL FINANCIAL REPORT

This is to certify that I have reviewed this financial report and, to the best of my knowledge and belief, attest that:

1. The report was prepared in conformity with the guidelines issued by the Office of Personnel Management and fairly presents the financial results of this contract year in conformity with those guidelines;

2. The costs included in the report are actual, allowable, allocable, and reasonable in accordance with the terms of the contract and with the cost principles of the Federal Employees' Group Life Insurance Program Acquisition Regulation (LIFAR) and the Federal Acquisition Regulation (FAR);

3. Income, overpayments, refunds, and other credits made or owed in accordance with the terms of the contract and applicable cost principles have been included in the report.

Contractor Name: _____

(Chief Executive Officer for FEGLI Operations)

Date signed: _____

(Chief Financial Officer for FEGLI Operations)

Date signed: _____

(Type or print and sign)

(End of Certificate)

■ 46. Revise section 2152.232–70 to read as follows:

2152.232–70 Payments.

As prescribed in 2132.171, insert the following clause:

PAYMENTS (OCT 2005)

(a) OPM will make available to the Contractor, in full settlement of its obligations under this contract, subject to adjustment based on actual claims and administrative cost, a fixed premium once per month on the first business day of the month. The premium is determined by an estimate of costs for the contract year as provided in Section_____ and is redetermined annually by mutual agreement of OPM and the Contractor. In addition, an annual reconciliation of premiums, benefits, and other costs is performed, and additional payment by OPM or reimbursement by the Contractor is paid as necessary.

(b) If OPM fails to fund the Letter of Credit (LOC) account for the full amount of premium due by the due date, a grace period of 31 days will be granted to OPM for providing any premium due, unless OPM has previously given written notice to the Contractor that the contract is to be discontinued. The contract will continue in force during the grace period.

(c) If OPM fails to fund the LOC account for any premiums within the grace period, the contract may be terminated at the end of the 31st day of the grace period in accordance with LIFAR 2149.002(a)(2). If during the grace period OPM presents written notice to the Contractor that the contract is to be terminated before the expiration of the grace period, the contract will be terminated the later of the date of receipt of such written notice by the Contractor or the date specified by OPM for termination. In either event, OPM will be liable to the Contractor for all premiums then due and unpaid.

(d) In accordance with LIFAR 2143.205 and LIFAR 2252.243–70, Changes, if a change is made to the contract that increases or decreases the cost of performance of the work under this contract, the Contracting Officer will make an equitable adjustment to the payments under this contract.

(e) In the event this contract is terminated in accordance with LIFAR part 2149, the special contingency reserve held by the Contractor will be available to pay the necessary and proper charges against this contract after other Program assets held by the Contractor are exhausted.

(End of Clause)

■ 47. Revise section 2152.232–71 to read as follows:

2152.232–71 Non-commingling of FEGLI Program funds.

As prescribed in 2132.772, insert the following clause:

NON-COMMINGLING OF FUNDS (OCT 2005)

(a) The Contractor must maintain FEGLI Program funds in such a manner as to be separately identifiable from other assets of the Contractor.

(b) The Contractor may request a modification of paragraph (a) of this section from the Contracting Officer. The modification must be requested, and approved by the Contracting Officer, in advance of any change, and the Contractor must demonstrate that accounting techniques have been established that clearly measure FEGLI Program cash and investment income (*i.e.*, subsidiary ledgers). Reconciliations between amounts reported and actual amounts shown in accounting records must be provided as supporting schedules to the annual financial report.

(End of Clause)

■ 48. In section 2152.237–70 revise the clause title date, and revise paragraphs (a), (c), and (d) to read as follows:

2152.237–70 Continuity of services.

* * * * *

CONTINUITY OF SERVICES (OCT 2005)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption. The Contractor further recognizes that upon contract expiration or termination, including termination by the Contractor for OPM's failure to make timely premium payments, a successor, either the Government or another Contractor, may continue them. The Contractor agrees to furnish phase-in training and exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

* * * * *

(c) The Contractor must allow as many experienced personnel as practicable to remain on the job during the transition period to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also must, except if prohibited by applicable law, disclose necessary personnel records and allow the successor to conduct onsite interviews with these employees. If selected employees are agreeable to the change, the Contractor must release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor will be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract termination that result from phase-in and phase-out operations) in accordance with the provisions of the administrative expense ceiling in the clause at 2152.231–70(b)(2)(ii)(B) and a risk charge or a service charge (profit) not to exceed a pro rata portion of the risk or service charge under this contract. The amount of profit will be based upon the accurate and timely processing of benefit claims, the volume and validity of complaints received by OPM, the timeliness and adequacy of reports on operations, and responsiveness to OPM offices, enrollees, beneficiaries, and Congress. In setting the final profit figure, obstacles overcome by the Contractor during the phase-in and phase-out period will be taken into consideration. OPM will pay an incentive amount to the Contractor not to exceed the pro rata risk or service charge for the continuity of services period, if the Contractor has performed exceptionally during the transition period to a new Contractor. The Contracting Officer uses the weighted guidelines method described in LIFAR 2115.404–71 in determining the incentive amount.

(End of Clause)

■ 49. In section 2152.243–70 revise the clause title date, and revise paragraphs (a)(1), (a)(2), and (c) to read as follows:

2152.243–70 Changes.

* * * * *

CHANGES (OCT 2005)

(a) * * *

(1) Description of services to be performed;

(2) Time of performance (*i.e.*, hours of the day, days of the week, *etc.*);

* * * * *

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

* * * * *

■ 50. In section 2152.244–70 revise the clause title date, and revise paragraphs (a) and (f) to read as follows:

2152.244–70 Subcontracts.

* * * * *

SUBCONTRACTS (OCTOBER 2005)

(a) The Contractor must notify the Contracting Officer reasonably in advance of entering into any subcontract or subcontract modification, or as otherwise specified by this contract, when the cost of that portion of the subcontract that is charged the FEGLI Program contract exceeds $550,000 and is at least 25 percent of the total cost of the subcontract.

* * * * *

(f) No subcontract placed under this contract will provide for payment on a cost-plus-a-percentage-of-cost basis. Any fee payable under cost reimbursement type subcontracts will not exceed the fee limitations in FAR 15.404–4(c)(4)(i). Any profit or fee payable under a subcontract will be in accordance with the provisions of Section _____.

* * * * *

■ 51. In section 2152.246–70 revise the clause title date, and revise paragraph (b) to read as follows:

2152.246–70 Quality assurance requirements.

* * * * *

QUALITY ASSURANCE REQUIREMENTS (OCT 2005)

* * * * *

(b) The Contractor must keep complete records of its quality assurance procedures and the results of their implementation and make them available to an authorized Government entity during contract performance and for 5 years after the end of the contract term to which the records relate.

* * * * *

■ 52. In section 2152.249–70 revise the clause title date, and revise paragraphs (b) and (d) to read as follows:

2152.249–70 Renewal and termination.

* * * * *

RENEWAL AND TERMINATION (OCT 2005)

* * * * *

(b) This contract may be terminated by OPM at any time in accordance with FAR part 49 and FAR 52.249–8 for default by the Contractor. This contract terminates at the end of the grace period if the Government does not fund the LOC account for any of the premium due to the Contractor (see LIFAR 2149.002(a)(2)). However, the Contractor and OPM may agree to continue the contract. In addition, the Contractor agrees to reinstate the contract if termination (1) arose out of the Government's inadvertent failure to fund the LOC account for the amount of the premium payment prior to the expiration of the grace period as defined in LIFAR 2102.101, and/or (2) was due to circumstances beyond the Government's control, provided that the LOC account is funded in the amount of the premium payment due to the Contractor within 5 days after the expiration of the grace period. In the event of such reinstatement, OPM will equitably adjust the payments due under the contract to compensate the Contractor for any increased costs of performance that result from the Government's failure to fund the LOC account prior to the expiration of the grace period and/or such reinstatement.

* * * * *

(d) Upon termination of the contract for Contractor's default or OPM's convenience, the Contractor agrees to assist OPM with an orderly and efficient transition to a successor in accordance with LIFAR 2137.102, LIFAR 2137.110, and the provisions of the ''Continuity of Services'' clause at 2152.237–70. The Contractor is not required to continue performance subsequent to OPM's failure to fund the LOC account for premiums due under paragraph (b) of this clause.

* * * * *

Subpart 2152.3—Provision and Clause Matrix

■ 53. In section 2152.370 revise the FEGLI Program Clause Matrix to read as follows:

2152.370 Use of the matrix.

* * * * *

FEGLI PROGRAM CLAUSE MATRIX

Clause No.	Text reference	Title	Use status
FAR 52.202–1	FAR 2.201	Definitions	M

FEGLI PROGRAM CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status
FAR 52.203–3	FAR 3.202	Gratuities	M
FAR 52.203–5	FAR 3.404	Covenant against Contingent Fees	M
FAR 52.203–6	FAR 3.503–2	Restrictions on Subcontractor Sales to the Government	M
FAR 52.203–7	FAR 3.502–3	Anti-Kickback Procedures	M
FAR 52.203–12	FAR 3.808	Limitation on Payments to Influence Certain Federal Transactions	M
2152.203–70	2103.571	Misleading, deceptive, or unfair advertising	M
2152.204–70	2104.9001	Taxpayer Identification Number	M
FAR 52.209–6	FAR 9.409(b)	Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	M
2152.209–71	2109.409(b)	Certification regarding debarment, suspension, proposed debarment and other responsibility matters.	M
2152.210–70	2110.7004(a)	Investment income	M
2152.210–71	2110.7004(b)	Notice of significant events	M
FAR 52.215–2	FAR 15.209(b)	Audit and Records—Negotiation	M
FAR 52.215–10	FAR 15.408(b)	Price Reduction for Defective Cost or Pricing Data	M
FAR 52.215–12	FAR 15.408(d)	Subcontractor Cost or Pricing Data	M
FAR 52.215–15	FAR 15.408(g)	Pension Adjustments and Asset Reversions	M
FAR 52.215–16	FAR 15.408(h)	Facilities Capital Cost of Money	M
FAR 52.215–17	FAR 15.408(i)	Waiver of Facilities Capital Cost of Money	A
FAR 52.215–18	FAR 15.408(j)	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) other than Pensions.	A
2152.215–70	2115.071	Contractor records retention	M
2152.216–70	2116.270–1(a)	Fixed price with limited cost redetermination—risk charge	A
2152.216–71	2116.270–1(b)	Fixed price with limited cost redetermination—service charge	A
FAR 52.219–8	FAR 19.708(a)	Utilization of Small Business Concerns	M
FAR 52.222–1	FAR 22.103–5(a)	Notice to the Government of Labor Disputes	M
FAR 52.222–3	FAR 22.202	Convict Labor	M
FAR 52.222–4	FAR 22.305	Contract Work Hours and Safety Standards Act—Overtime Compensation.	M
FAR 52.222–21	FAR 22.810(a)(1)	Prohibition of Segregated Facilities	M
FAR 52.222–22	FAR 22.810(a)(2)	Previous Contracts and Compliance Reports	M
FAR 52.222–25	FAR 22.810(d)	Affirmative Action Compliance	M
FAR 52.222–26	FAR 22.810(e)	Equal Opportunity	M
FAR 52.222–29	FAR 22.810(g)	Notification of Visa Denial	A
FAR 52.222–35	FAR 22.1310(a)(1)	Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	M
FAR 52.222–36	FAR 22.1408(a)	Affirmative Action for Workers with Disabilities	M
FAR 52.222–37	FAR 22.1310(b)	Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	M
FAR 52.223–6	FAR 23.505	Drug-Free Workplace	M
2152.224–70	2124.104–70	Confidentiality of records	M
FAR 52.227–1	FAR 27.201–2(a)	Authorization and Consent	M
FAR 52.227–2	FAR 27.202–2	Notice and Assistance regarding Patent and Copyright Infringement	A
FAR 52.228–7	FAR 28.311–1	Insurance—Liability to Third Persons	M
2152.231–70	2131.270	Accounting and allowable cost	M
FAR 52.232–9	FAR 32.111(c)(2)	Limitation on Withholding of Payments	M
FAR 52.232–17	FAR 32.617(a) and (b)	Interest	M
FAR 52.232–23	FAR 32.806(a)(1)	Assignment of Claims	A
FAR 52.232–33	FAR 32.1110(a)(1)	Payment by Electronic Funds Transfer—Central Contractor Registration	M
2152.232–70	2132.171	Payments	M
2152.232–71	2132.772	Non-commingling of FEGLI Program funds	M
2152.232–72	2132.806	Approval for assignment of claims	M
FAR 52.233–1	FAR 33.215	Disputes (Alternate I)	M
2152.237–70	2137.110	Continuity of services	M
FAR 52.242–1	FAR 42.802	Notice of Intent to Disallow Costs	M
FAR 52.242–3	FAR 42.709–6	Penalties for Unallowable Costs	M
FAR 52.242–13	FAR 42.903	Bankruptcy	M
2152.243–70	2143.205	Changes	M
FAR 52.244–5	FAR 44.204(c)	Competition in Subcontracting	M
2152.244–70	2144.204	Subcontracts	M
FAR 52.245–2	FAR 45.106(b)(1)	Government Property (Fixed-Price Contracts)	M
FAR 52.246–4	FAR 46.304	Inspection of Services—Fixed Price	M
FAR 52.246–25	FAR 46.805	Limitation of Liability—Services	M
2152.246–70	2146.270–1	Quality assurance requirements	M
FAR 52.247–63	FAR 47.405	Preference for U.S.-Flag Air Carriers	M
FAR 52.249–2	FAR 49.502(b)(1)(i)	Termination for Convenience of the Government (Fixed-Price)	M
FAR 52.249–8	FAR 49.504(a)(1)	Default (Fixed Price Supply and Service)	M
FAR 52.249–14	FAR 49.505(d)	Excusable Delays	M
2152.249–70	2149.505–70	Renewal and termination	M
FAR 52.251–1	FAR 51.107	Government Supply Sources	A
FAR 52.252–4	FAR 52.107(d)	Alterations in Contract	M

FEGLI PROGRAM CLAUSE MATRIX—Continued

Clause No.	Text reference	Title	Use status
FAR 52.252–6	FAR 52.107(f)	Authorized Deviations in Clauses	M

[FR Doc. 05–14005 Filed 7–15–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 050627169–5169–01; I.D. 051804C]

RIN 0648–AT44

Pacific Halibut Fisheries; Subsistence Fishing; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects a final rule published in the **Federal Register** amending the Subsistence Halibut Program. This correcting amendment corrects the description, geographic coordinates, and associated figures for the Anchorage/Matsu/Kenai non-subsistence marine waters area and the Local Area Management Plan (LAMP) for the halibut fishery in Sitka Sound in the Gulf of Alaska.

DATES: Effective on July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Bubba Cook, 907–586–7425 or *bubba.cook@noaa.gov*.

SUPPLEMENTARY INFORMATION: The final rule that is the subject of these corrections was published on April 1, 2005 (70 FR 16742), and implemented amendments to the Subsistence Halibut Program. Some of these amendments were intended to address localized depletion in areas of high population density by increasing gear and harvest restrictions in the Sitka Sound LAMP and in the Anchorage/Matsu/Kenai non-subsistence marine waters area. In a recent review of this rule, NMFS discovered typographical errors in the geographic coordinates and description of the Anchorage/Matsu/Kenai non-subsistence marine waters area. NMFS also discovered that the associated revised figures for the Anchorage/Matsu/Kenai non-subsistence marine waters area and the Sitka Sound LAMP were inadvertently omitted.

Need for Correction

The regulations at § 300.65(g)(1)(i)(D) provide an accurate description of the Sitka Sound LAMP setline closure area. However, a parenthetical clause directing the public to a graphical representation of the setline closure area would provide additional assistance in understanding the regulation. Additionally, as published, Figure 1 to Subpart E describing the Sitka Sound LAMP does not correctly identify the setline gear closure area near Low Island established by § 300.65(g)(1)(i)(D). This action amends § 300.65(g)(1)(i)(D) and Figure 1 to Subpart E by adding a parenthetical clause at the end directing the public to Figure 1 to Subpart E and amends Figure 1 to Subpart E to correctly depict the setline closure area.

The definition at § 300.65(g)(3)(iii)(A) unintentionally excludes the westernmost point of Hesketh Island as a visual reference. Additionally, Figure 4 to Subpart E does not accurately represent the geographic boundary line extending from the westernmost point of Hesketh Island across Cook Inlet at 59′30.40′ N. lat. consistent with the definition at § 300.65(g)(3)(iii)(A). This action amends § 300.65(g)(3)(iii)(A) to more precisely describe the non-subsistence area boundaries by adding the visible geographic landmark of Hesketh Island to the description and amends Figure 4 to Subpart E to accurately depict the regulatory description of the Anchorage/Matsu/Kenai non-subsistence marine waters area north of 59′30.40′ N. lat. consistent with the definition at § 300.65(g)(3)(iii)(A).

As published, § 300.65(g)(3)(iii)(B) correctly identifies Cape Douglas as the western shore southern boundary of the Anchorage/Matsu/Kenai non-subsistence marine waters area, but incorrectly states that Cape Douglas is located at 58′10′ N. lat., a geographic position that is actually 41 minutes (41 nautical miles) south of the true location of Cape Douglas. The definition at § 300.65(g)(3)(iii)(B) also incorrectly identifies the description and the geographical coordinates for the easternmost point of Jakolof Bay at 151′31.09′ W. long. This action amends § 300.65(g)(3)(iii)(B) and its associated Figure 4 to Subpart E by correctly describing the geographic coordinates of the Cape Douglas western shore southern boundary of the Anchorage/Matsu/Kenai non-subsistence marine waters area as 58′51.10′ N. lat. Additionally, this action amends § 300.65(g)(3)(iii)(B) to correctly identify the easternmost point at Jakolof Bay as 151′31.90′ W. long., consistent with the westernmost point of Hesketh Island to the north.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), the Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately correct the published coordinates and associated figures for this regulation will eliminate a potential source of confusion and constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment, as such procedures would be unnecessary and contrary to the public interest. Notice and comment is unnecessary because this action makes only minor, non-substantive changes to 50 CFR 300.65. These changes include: (1) correcting typographical errors in the geographic coordinates and description of the Anchorage/Matsu/Kenai non-subsistence marine waters area; and (2) providing revised figures for the Anchorage/Matsu/Kenai non-subsistence marine waters area and the Sitka Sound LAMP that were inadvertently omitted. The rule does not make any substantive change in the rights and obligations of subsistence fishermen managed under the subsistence halibut regulations. No aspect of this action is controversial and no change in operating practices in the fishery is required.

Because this action makes only minor, non-substantive changes to 50 CFR 300.65 and therefore does not constitute a substantive rule, it is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d).

List of Subjects 50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

Dated: July 13, 2005.

Rebecca Lent

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 300 is corrected by making the following correcting amendments:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.65, paragraphs (g)(1)(i)(D), (g)(3)(iii)(A), and (g)(3)(iii)(B) are revised to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off of Alaska.

* * * * *

(g) * * *

(1) * * *

(i) * * *

(D) In Area 2C within the Sitka LAMP from June 1 to August 31, setline gear may not be used in a 4 nautical mile radius extending south from Low Island at 57′00′42″ N. lat., and 135′36′34″ W. long. (see Figure 1 to Subpart E).

* * * * *

(3) * * *

(iii) * * *

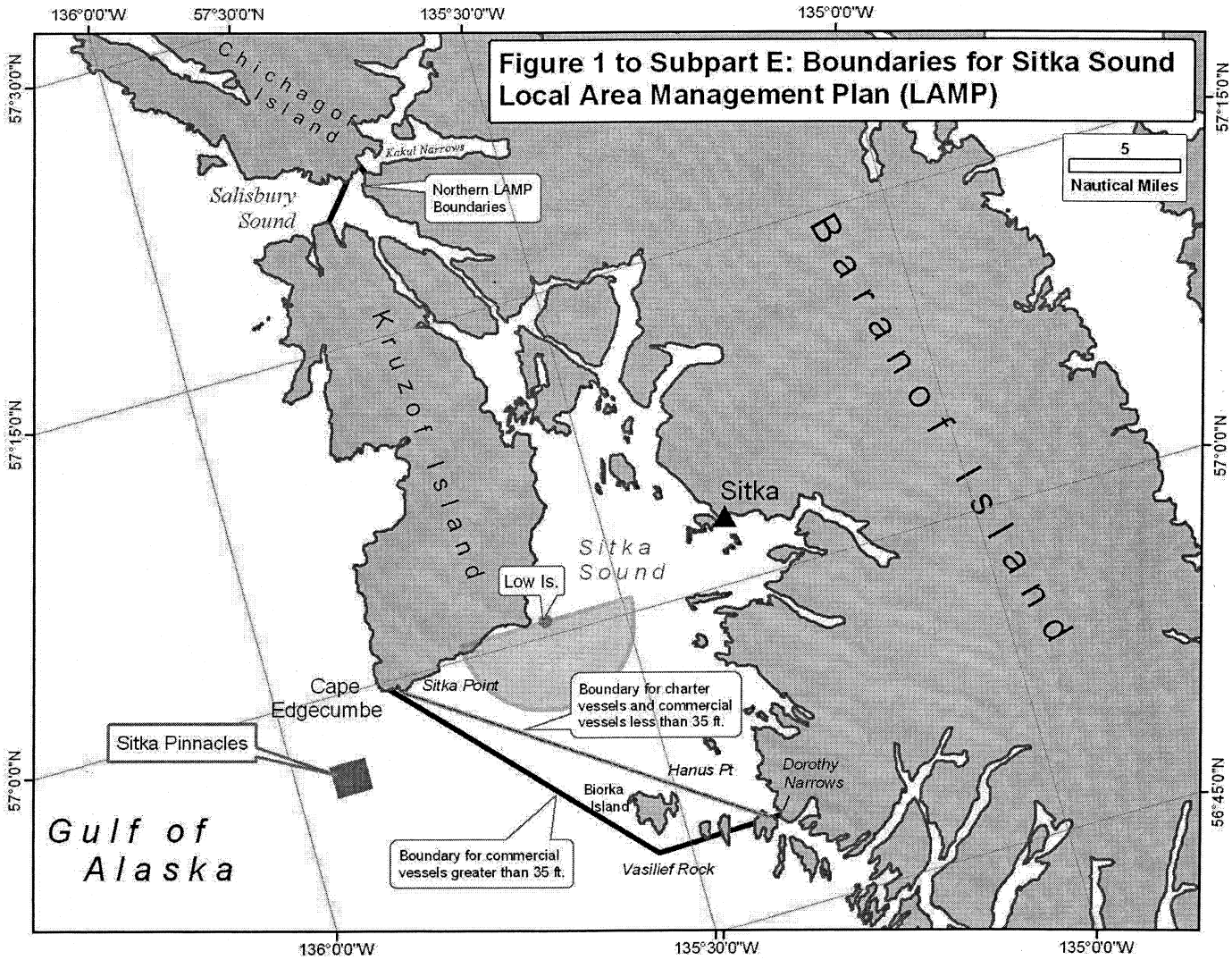
(A) All waters of Cook Inlet north of a line extending from the westernmost point of Hesketh Island at 59′30.40″ N. lat., except those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61′05.00″ N. lat., 151′01.00″ W. long.) south to the easternmost tip of Granite Point (61′01.00″ N. lat., 151′23.00″ W. long.) (Tyonek subdistrict); and

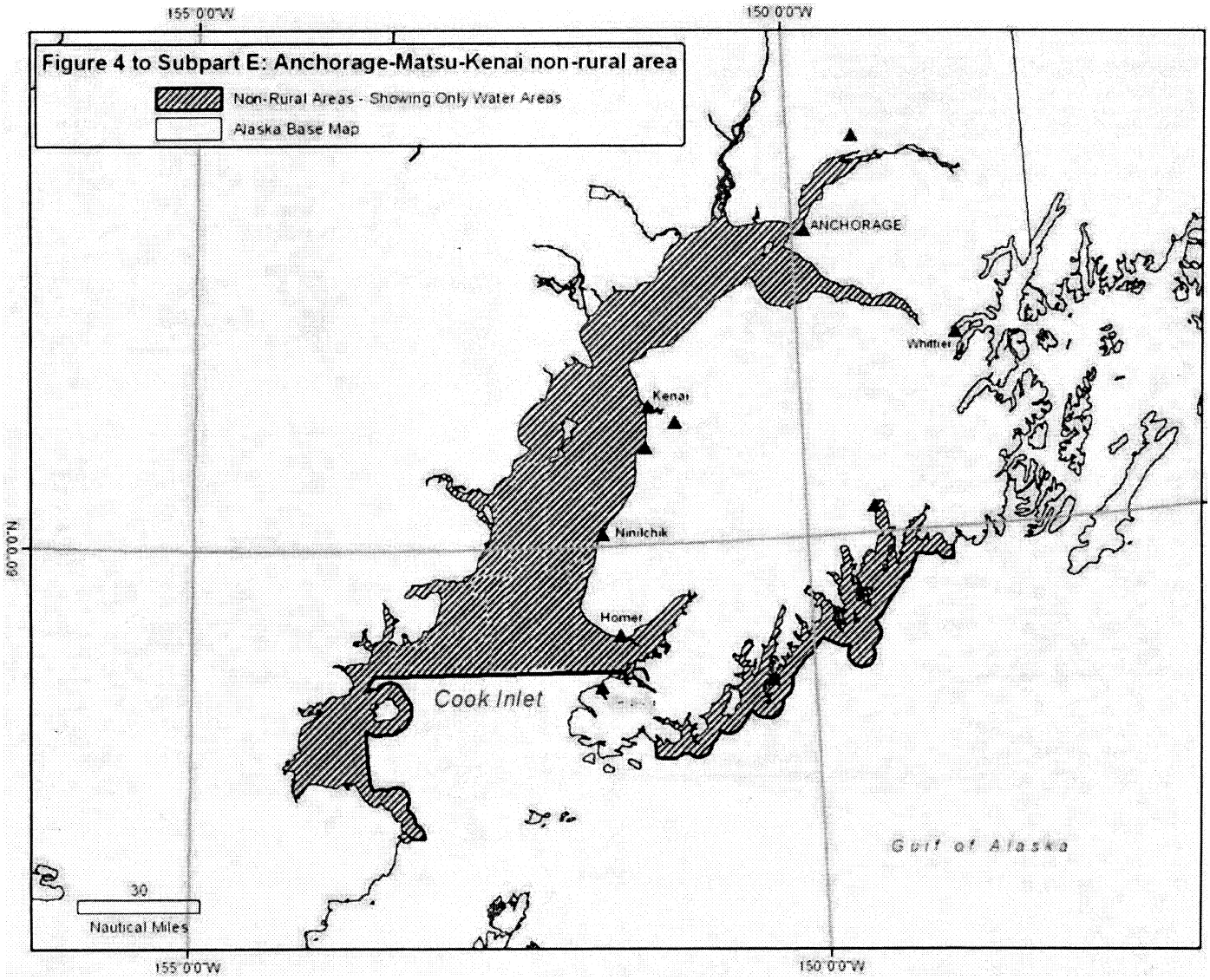
(B) All waters of Alaska south of 59′30.40″ N. lat. on the western shore of Cook Inlet to Cape Douglas (58′51.10″ N. lat.) and in the east to Cape Fairfield (148′50.25″ W. long.), except those waters of Alaska west of a line from the easternmost point of Jakolof Bay (151′31.90″ W. long.), and following the shore to a line extending south from the easternmost point of Rocky Bay (151′18.41″ W. long.); and

* * * * *

■ 3. In the Appendix to Subpart E, revise Figure 1 to Subpart E—Sitka Local Area Management Plan and Figure 4 to Subpart E—Anchorage-Matsu-Kenai Non-rural Area to read as follows:

BILLING CODE 3510–22–S





[FR Doc. 05–14093 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050408096–5182–02; I.D. 033105A]

RIN 0648–AS69

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Reef Fish Limited Access System

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 24 to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico (Amendment 24) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes a limited access system for the commercial reef fish fishery in the Gulf of Mexico by capping participation at the current level. The intended effect of this final rule is to provide economic and social stability in the fishery by preventing speculative entry into the fishery.

DATES: This final rule is effective August 17, 2005.

ADDRESSES: Copies of the Regulatory Impact Review (RIR) and Final Regulatory Flexibility Analyses (FRFA) are available from Peter Hood, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *peter.hood@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, telephone: 727–824–5305; fax: 727–824–5308; e-mail: *peter.hood@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On April 6, 2005, NMFS published a notice of availability of Amendment 24 and requested public comment on that amendment (70 FR 17401). On April 25, 2005, NMFS published the proposed rule to implement Amendment 24 and requested public comment (70 FR

21170). NMFS received no comments on Amendment 24 or the associated proposed rule. NMFS approved Amendment 24 on July 5, 2005. The rationale for the measures in Amendment 24 is provided in the amendment and in the preamble to the proposed rule and is not repeated here. This final rule is implemented with no changes from the proposed rule.

Classification

The Administrator, Southeast Region, NMFS, has determined Amendment 24 is necessary for the conservation and management of the Gulf reef fish fishery and is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a FRFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) and a summary of the analyses completed to support the action. No public comments were received on the IRFA or the economic impacts of the rule. Therefore, no changes were made in the final rule as a result of such comments. A summary of the FRFA follows.

This final rule will establish a limited access system for the commercial reef fish fishery in the Gulf of Mexico. The purpose of the rule is to provide stability in the Gulf of Mexico commercial reef fish fishery as part of the strategy to achieve optimum yield (OY) and maximize the overall benefits to the Nation provided by the fishery. The Magnuson-Stevens Act provides the statutory basis for the final rule. No duplicative, overlapping, or conflicting Federal rules have been identified.

An estimated 1,161 vessels were permitted to fish commercially for Gulf reef fish in 2003, down from 1,718 in 1993, and 61 percent to 74 percent had logbook-reported landings from 1993 through 2003. The median annual gross revenue from all logbook-reported sales of finfish by these vessels ranged from approximately $12,000 to $23,000 during this period. The median percentage of gross revenues attributable to Gulf reef fish ranged from 95 percent to 98 percent. Although participation in the fishery has declined since 1993, this decline has been voluntary and presumed attributable to economic conditions in the fishery and fishing in general and not due to regulatory requirements. Although access has been limited in this fishery since 1992, transfer of permits is not restricted, and those seeking to enter the fishery can purchase a permit from a permit holder. Such transfers do occur: 253 of the 1,175 valid permits as of February 6, 2004, were permits that had been transferred at some time since 1998. Thus, entry into the fishery occurs, as evidenced by the transfer of 253 existing permits to vessels new to the fishery.

The final rule will affect all current participants in the fishery and all entities that may be interested in entering the fishery. Although the number of current participants is known, no estimate of the number of prospective participants can be provided, although it is not expected to be substantial due to a decline in total participation in the fishery even though permit transfer and entry opportunities are available.

The final rule will not change current reporting, record-keeping, and other compliance requirements under the FMP. These requirements include qualification criteria for the commercial vessel permit and logbook landing reports. All of the information elements required for these processes are standard elements essential to the successful operation of a fishing business and should, therefore, already be collected and maintained as standard operating practice by the business. The requirements do not require professional skills. Because these compliance requirements are unchanged under this rule, the requirements are not deemed to be onerous.

One general class of small business entities will be directly affected by the final rule, commercial fishing vessels. The Small Business Administration defines a small business that engages in commercial fishing as a firm that is independently owned and operated, is not dominant in its field of operation, and has annual receipts up to $3.5 million per year. Based on the revenue profiles provided above, all commercial entities operating in the Gulf reef fish fishery are considered small entities.

The final rule will apply to all entities that operate in the Gulf of Mexico commercial reef fish fishery and those entities interested in or seeking to enter the fishery. The rule will, therefore, affect a substantial number of small entities.

The outcome of ''significant economic impact'' can be ascertained by examining two issues: disproportionality and profitability. The disproportionality question is: Do the regulations place a substantial number of small entities at a significant competitive disadvantage to large entities? All the vessel operations affected by the proposed rule are considered small entities, so the issue of disproportionality does not arise in the present case.

The profitability question is: Do the regulations significantly reduce profit for a substantial number of small entities? The final rule will continue the limited access system in the fishery. Continuation of this system would be expected to increase profitability for the entities remaining in the fishery if participation continues to decline, as has occurred since 1993. Should the decline in participation cease, profits would be expected to continue at current levels. Should the fishery revert to open access, participation would be expected to increase, and average profit per participant would be expected to decline, possibly to the point of elimination of all profits from this fishery.

The final rule will continue the requirement to have a vessel permit in order to participate in the commercial reef fish fishery. The cost of the permit is $50, and renewal is required every other year (the permit is automatically renewed the second year). Because this is a current requirement, there would be no additional impacts on participant profits as a result of this requirement.

Three alternatives were considered to the final rule. The status quo alternative would allow the fishery to revert to open access. Open access conditions would be expected to lead to an increase in the number of permitted vessels, or, at least, slow the rate of decline in participation that has occurred. Any increase in the number of permitted vessels landing Gulf reef fish would lead to an expected decrease in producer surplus from that in 2003, estimated at $404,500 to $647,200.

The remaining two alternatives would continue the current moratorium on issuing new Gulf reef fish permits for 5 years and 10 years, respectively, compared to the final rule which would continue the moratorium indefinitely. Thus, the fishery would continue as a limited access fishery under each alternative. It is impossible to distinguish these alternatives empirically in terms of fishery behavior using available data. However, it is reasonable to assume that fishermen believe that regardless of the duration of the program specified, a precedent for indefinite use of private market mechanisms to allow entry into the fishery has been established, given the history of successfully functioning private markets for vessel permits. Thus, the outcomes of these three alternatives are expected to be functionally equivalent. As stated previously, under the current limited access program, the fishery is estimated to have generated $404,500 to $647,200 in producer surplus in 2003. Assuming the increase

in producer surplus mirrors that of fleet contraction exhibited recently (1.15 percent), the resultant estimates of producer surplus are approximately $450,000 to $720,000 by 2010, and $484,000 to $775,000 by 2015. Each alternative would also continue to provide for market-based compensation for vessels that exit the fishery, and the permit market would continue to provide an economically rational basis for regulating the entry of vessels into the commercial Gulf reef fish fishery and allocating access to fishery resources among competing users in the commercial fisheries.

Although the final rule would imply a more permanent system than the alternatives, the system established under any alternative could be suspended at any time through appropriate regulatory action. Adopting an indefinite duration, however, eliminates the need for action at specific intervals to continue the system, thereby eliminating the costs associated with the additional regulatory process. The administrative and development cost of the current action is estimated to be $200,000. This cost includes all administrative costs associated with development, review, and implementation of this rule, including Council meetings, public hearings, travel, staff, and printing. Further, the final rule may better address the Council's purpose of providing stability in the commercial and recreational fisheries for Gulf reef fish, preventing speculative entry into the commercial fisheries, and achieving OY. The status quo alternative would not achieve the Council's objectives.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders for the Gulf reef fish fishery.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: July 13, 2005.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.4, revise the last sentence of paragraph (a)(2)(v) and paragraph (m) introductory text to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(v) * * * See paragraph (m) of this section regarding a limited access system for commercial vessel permits for Gulf reef fish and limited exceptions to the earned income requirement for a permit.

* * * * *

(m) *Limited access system for commercial vessel permits for Gulf reef fish.*

* * * * *

[FR Doc. 05–14092 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Part 660

[Docket No. 040628196-5130-02; I.D. 061704A]

RIN 0648–AQ92

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to a final rule that was published on May 24, 2005.

DATES: Effective August 1, 2005.

FOR FURTHER INFORMATION CONTACT: Alvin Z. Katekaru, Pacific Islands Area Office, NMFS, 808–973–2937.

SUPPLEMENTARY INFORMATION: The final rule for Amendment 11 was published in the Federal Register on May 24, 2005, (70 FR 29646). Instruction 9 was misnumbered as Instruction 10. This document corrects this oversight.

Correction

In the rule FR Doc. 05–10351, in the issue of Tuesday, May 24, 2005 (70 FR 29646), on page 29657, in the third column, correct Instruction 10 to read Instruction 9.

Dated: July 13, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–14096 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 071205A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific Ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Pacific Ocean perch total allowable catch (TAC) in the Central Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 12, 2005, through 2400 hrs, A.l.t., December 31, 2005.

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

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

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 Pacific Ocean perch TAC in the Central Aleutian District of the BSAI is 2,808 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the 2005 Pacific Ocean perch TAC in the Central Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,458 mt, and is setting aside the remaining 350 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific Ocean perch in the Central Aleutian District of the BSAI.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific Ocean perch in the Central Aleutian District of the BSAI.

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

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

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

Dated: July 12, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–14080 Filed 7–13–05; 2:46 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 071305A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific Ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2005 total allowable catch (TAC) of Pacific Ocean perch in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 14, 2005, through 2400 hrs, A.l.t., December 31, 2005.

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

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

The 2005 TAC of Pacific Ocean perch in the Central Regulatory Area of the GOA is 8,535 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2005 TAC of Pacific Ocean perch in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 8,000 mt, and is setting aside the remaining 535 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific Ocean perch in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific Ocean perch in the Central Regulatory Area of the GOA.

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

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

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

Dated:July 13, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–14081 Filed 7–13–05; 2:46 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 136
Monday, July 18, 2005

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 THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–148521–04]

RIN 1545–BD77

Classification of Certain Foreign Entities; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulation relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes.

DATES: The public hearing, originally scheduled for July 27, 2005, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Thursday, April 14, 2005, (70 FR 19722), announced that a public hearing was scheduled for July 27, 2005, at 10 a.m., in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 7701 of the Internal Revenue Code.

The public comment period for these regulations expired on July 13, 2005. The outlines of oral comments were due on July 6, 2005. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Wednesday, July 13, 2005, no one has requested to speak. Therefore, the public hearing scheduled for July 27, 2005, is cancelled.

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 05–14083 Filed 7–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–131739–03]

RIN 1545–BC45

Substitute for Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the IRS preparing or executing returns for persons who fail to make required returns. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronically generated comments and requests for a public hearing must be received by October 17, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–131739–03), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–131739–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–131739–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Tracey B. Leibowitz, (202) 622–4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 301 relating to section 6020. The temporary regulations retain the method by which an internal revenue officer or employee prepares a return under section 6020(a). Further, the temporary regulations provide that a document (or set of documents) signed by an authorized internal revenue officer or employee is a return under section 6020(b) if the document (or set of documents) identifies the taxpayer by name and taxpayer identification number, contains sufficient information from which to compute the taxpayer's tax liability, and the document (or set of documents) purport to be a return under section 6020(b). A Form 13496, ''IRC Section 6020(b) Certification,'' or any other form that an authorized internal revenue officer or employee signs and uses to identify a document (or set of documents) containing the information set forth above as a section 6020(b) return, and the documents identified, constitute a valid section 6020(b) return. The text of those regulations also serve as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has 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 a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Tracey B. Leibowitz, of the Office of the Associate Chief Counsel (Procedure and Administration), Administrative Provisions and Judicial Practice Division.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended to read as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation continues to read, in part, as follows:

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

Par. 2. Section 301.6020–1 is added to read as follows:

§ 301.6020–1 Returns prepared or executed by the Commissioner or other internal revenue officers.

[The text of proposed § 301.6020–1 is the same as the text of § 301.6020–1T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–14085 Filed 7–15–05; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–DE–0001; FRL–7939–2]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Ambient Air Quality Standard for Ozone and Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware for the purpose of including the new ambient air quality standards for ozone and fine particulate matter. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by August 17, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–DE–0001 by one of the following methods:

A. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *campbell.dave@epa.gov.*

D. Mail: R03–OAR–2005–DE–0001, David Campbell, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. R03–OAR–2005–DE–0001. 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.docket.epa.gov/rmepub/,* 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 RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov websites are 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Delaware's Ambient Air Quality Standard for Ozone and Fine Particulate Matter, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: July 8, 2005.

Richard J. Kampf,

Acting, Regional Administrator, Region III.

[FR Doc. 05–13986 Filed 7–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7938–4]

Ocean Dumping; LA–3 Ocean Dredged Material Disposal Site Designation

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes the final designation of an ocean dredged material disposal site (ODMDS) located offshore of Newport Beach, California (known as LA–3), managed at a maximum annual dredged material disposal quantity of 2,500,000 cubic yards (yd^3) (1,911,000 cubic meters [m^3]), and the management of permanently-designated LA–2 ODMDS at an increased maximum annual dredged material disposal quantity of 1,000,000 yd^3 (765,000 m^3) for the ocean disposal of clean dredged material from the Los Angeles County and Orange County regions. The availability of suitable ocean disposal sites to support ongoing maintenance and capital improvement projects is essential for the continued use and economic growth of the vital commercial and recreational areas in the region. Dredged material will not be allowed to be disposed of in the ocean unless the material meets strict environmental criteria established by the EPA and U.S. Army Corps of Engineers (USACE).

The action would shift the center of the permanently-designated LA–3 site approximately 1.3 nautical miles (nmi) (2.4 kilometers [km]) to the southeast of the interim LA–3 site, and encompass a region that is already disturbed by dredged material. The permanent site also would be located on a flat, depositional plain, and away from the submarine canyons, that will be more amenable to surveillance and monitoring activities. The LA–2 site is a permanently designated ODMDS that has been historically managed at an average annual disposal quantity of 200,000 yd^3 (153,000 m^3) for the disposal of material dredged primarily from the Los Angeles/Long Beach Harbor complex. The proposed action will allow an increased volume of dredged material to be disposed annually at this site. The annual disposal quantity has occasionally exceeded the historical annual average due to capital projects from both the ports of Los Angeles and Long Beach. Thus, the new maximum volume designation would accommodate the projected average annual volume requirements as well as provide for substantial annual volume fluctuations.

DATES: Comments must be received on or before August 17, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Allan Ota, Dredging and Sediment Management Team, U.S. Environmental Protection Agency, Region IX (WTR–8), 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972–3476 or FAX: (415) 947–3537 or E-mail: *ota.allan@epa.gov.*

SUPPLEMENTARY INFORMATION: The supporting document for this site designation is the Final Environmental Impact Statement for the Site Designation of the LA–3 Ocean Dredged Material Disposal Site off Newport Bay, Orange County, California. This document is available for public inspection at the following locations:

1. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California 94105
2. EPA Public Information Reference Unit, Room 2904, 401 M Street, SW., Washington, DC 20460
3. U.S. EPA, Southern California Field Office, 600 Wilshire Boulevard, Suite 1460, Los Angeles, CA 90017
4. Lloyd Taber-Marina del Rey Library, 4533 Admiralty Way, Marina del Rey, CA 90292
5. Long Beach Public Library, 101 Pacific Avenue, Long Beach, CA 90822
6. Los Angeles Public Library, Central Library, 630 West 5th Street, Los Angeles, CA 90071
7. Los Angeles Public Library, San Pedro Regional Branch Library, 931 South Gaffey Street, San Pedro, CA 90731
8. Newport Beach Public Library, Balboa Branch, 100 East Balboa Boulevard, Balboa, CA 92661
9. Newport Beach Public Library, Central Library, 1000 Avocado Avenue, Newport Beach, CA 92660
10. Newport Beach Public Library, Corona del Mar Branch, 420 Marigold Avenue, Corona del Mar, CA 92625
11. Newport Beach Public Library, Mariners Branch, 2005 Dover Drive, Newport Beach, CA 92660
12. U.S. EPA Web site: *http://www.epa.gov/region9/.*
13. U.S. Army Corps of Engineers' Web site: *http://www.spl.usace.army.mil.*

A. Potentially Affected Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the LA–3 and LA–2 ODMDS, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Rule would be primarily of relevance to parties in the Los Angeles and Orange County areas seeking permits from the USACE to transport dredged material for the purpose of disposal into ocean waters at the LA–3 and LA–2 ODMDS, as well as the USACE itself (when proposing to dispose of dredged material at the LA–3 and LA–2 ODMDS). Potentially affected categories and entities seeking to use the LA–3 and LA–2 ODMDS and thus subject to this Rule include:

Category	Examples of potentially affected entities
Industry and General Public	• Ports. • Marinas and Harbors. • Shipyards and Marine Repair Facilities. • Berth owners.

Category	Examples of potentially affected entities
State, local and tribal governments	• Governments owning and/or responsible for ports, harbors, and/or berths. • Government agencies requiring disposal of dredged material associated with public works projects.
Federal government	• U.S. Army Corps of Engineers Civil Works and O & M projects. • Other Federal agencies, including the Department of Defense.

This table lists the types of entities that EPA is now aware potentially could be affected. EPA notes, however, that nothing in this Rule alters in any way, the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization is potentially affected by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the LA–3 and/or LA–2 ODMDS. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION** section.

B. Background

Ocean disposal of dredged materials is regulated under Title I of the Marine Protection, Research and Sanctuaries Act (MPRSA; 33 U.S.C. 1401 *et seq.*). The EPA and the USACE share responsibility for the management of ocean disposal of dredged material. Under Section 102 of MPRSA, EPA has the responsibility for designating an acceptable location for the ODMDS. With concurrence from EPA, the USACE issues permits under MPRSA Section 103 for ocean disposal of dredged material deemed suitable according to EPA criteria in MPRSA Section 102 and EPA regulations in Title 40 of the Code of Federal Regulations Part 227 (40 CFR part 227).

It is EPA's policy to publish an EIS for all ODMDS designations (**Federal Register**, Volume 63, Page 58045 [63 FR 58045], October 1998). A site designation EIS is a formal evaluation of alternative sites which examines the potential environmental impacts associated with disposal of dredged material at various locations. The EIS must first demonstrate the need for the proposed ODMDS designation action (40 CFR 6.203(a) and 40 CFR 1502.13) by describing available or potential aquatic and non-aquatic (*i.e.*, land-based) alternatives and the consequences of not designating a site—the No Action Alternative. Once the need for an ocean disposal site is established, potential sites are screened for feasibility through the Zone of Siting Feasibility (ZSF) process. Remaining alternative sites are evaluated using EPA's ocean disposal criteria at 40 CFR part 228 and compared in the EIS. Of the sites which satisfy these criteria, the site which best complies with them is selected as the preferred alternative for formal designation through rulemaking published in the **Federal Register** (FR).

Formal designation of an ODMDS in the **Federal Register** does not constitute approval of dredged material for ocean disposal. Designation of an ODMDS provides an ocean disposal alternative for consideration in the review of each proposed dredging project. Ocean disposal is only allowed when EPA and USACE determine that the proposed activity is environmentally acceptable according to the criteria at 40 CFR Part 227. Decisions to allow ocean disposal are made on a case-by-case basis through the MPRSA Section 103 permitting process or its equivalent process for USACE's Civil Works projects. Material proposed for disposal at a designated ODMDS must conform to EPA's permitting criteria for acceptable quality (40 CFR Parts 225 and 227), as determined from physical, chemical, and bioassay/bioaccumulation testing (EPA and USACE 1991). Only clean non-toxic dredged material is acceptable for ocean disposal.

The interim LA–3 disposal site is located on the continental slope of Newport Submarine Canyon at a depth of about 1,475 feet (ft) (450 meters [m]), approximately 4.3 nmi (8 km) southwest of the entrance of Newport Harbor. This region is characterized by a relatively smooth continental slope (approximately two-degree slope) incised by a complicated pattern of meandering broad submarine canyons that can be up to 98 ft (30 m) deep and 656–2,625 ft (200–800 m) wide. The circular interim site boundary is centered at 33° 31′42″ N and 117° 54′48″ W, with a 3,000 ft (915 m) radius.

The interim LA–3 site has been used for disposing sediment dredged from harbors and flood channels within the County of Orange since 1976. Prior to 1992, LA–3 was permitted by the USACE as a designated ocean disposal site for specific projects only. In 1992, the EPA approved LA–3 as an interim disposal site; this interim status expired January 1, 1997 (Water Resources Development Act [WRDA] 1992). The expiration date was extended to January 1, 2000, through the 1996 WRDA (1996). In 1999, this interim status was extended for another three years and expired December 31, 2002. The proposed action would provide permanent designation of LA–3 for disposal of dredged materials from ongoing dredging activities, such as dredging to preserve the wetland habitat within the Upper Newport Bay or to maintain navigation channels at Newport and Dana Point Harbors.

The proposed action would also shift the center of the LA–3 site approximately 1.3 nmi (2.4 km) to the southeast of the interim LA–3 site. The circular boundary of the permanently designated LA–3 site would be centered at 33° 31′00″ N and 117° 53′30″ W and would have a 3,000 ft (915 m) radius. The depth of the center of the site would be approximately 1,600 ft (490 m). At this location the site boundary would be away from the submarine canyons that run through the interim site, thus simplifying surveillance and monitoring activities.

The LA–2 ODMDS was designated as a permanent disposal site on February 15, 1991. The LA–2 site is located on the outer continental shelf, margin, and upper southern wall of the San Pedro Sea Valley at depths from approximately 360–1,115 ft (110 to 340 m), about 5.9 nmi (11 km) south-southwest of the entrance to Los Angeles Harbor. The relatively flat continental shelf occurs in water depths to about 410 ft (125 m) with a regional slope of 0.8 degree. Then the slope becomes steep at about 7 degrees seaward to the shelf break. The southern wall of the San Pedro Sea Valley drops away with slopes steeper than 9 degrees. The site boundary is centered at 33° 37′6″ N and 118° 17′24″ W with a radius of 3,000 ft (915 m).

The LA–2 ODMDS does not have an annual disposal volume limit. However, the site designation EIS evaluated potential impacts based on a historical

annual average of 200,000 yd^3 (153,000 m^3). Since 1991, the annual disposal quantity occasionally has exceeded the pre-designation historical annual average because of capital projects from both the ports of Los Angeles and Long Beach.

The need for ongoing ocean disposal capacity is based on historical dredging volumes from the local port districts, marinas and harbors, and federal navigational channels, as well as on estimates of future average annual dredging. An overall average of approximately 390,000 yd^3 (298,000 m^3) per year of dredged material requiring ocean disposal is expected to be generated in the area. The purpose of the proposed action is to ensure that adequate, environmentally-acceptable ocean disposal site capacity, in conjunction with other management options including upland disposal and beneficial reuse, is available for suitable dredged material generated in the greater Los Angeles County-Orange County area.

EPA and USACE encourage the use of dredged material for beach replenishment in areas degraded by erosion. The grain size distribution of dredged material must be compatible with the receiving beach, and biological and water quality impacts must be considered prior to permitting of beach disposal. EPA and USACE evaluate the selection of appropriate disposal methods on a case-by-case basis for each permit. Additionally, opportunities arise periodically to use dredged material for marine landfilling projects, also referred to as the creation of ''fastlands.'' When the need arises, the use of dredged material for the creation of fastlands is considered a viable alternative to ocean disposal. Other potential beneficial uses for dredged material include construction fill, use as cap material in aquatic remediation projects, wetland creation, wetland restoration, landfill daily cover, and recycling into commercial products such as construction aggregate, ceramic tiles, or other building materials. Each of these disposal management options is evaluated when permits are issued for individual dredging projects.

A Zone of Siting Feasibility (ZSF) analysis estimates that after consideration of upland disposal and other beneficial uses, an average of approximately 390,000 yd^3 (298,000 m^3) per year of dredged material will require ocean disposal. This material would be proposed for ocean disposal by project proponents because it is not of an appropriate physical quality (*e.g.*, it is predominantly fine-grained material) for reuse or because a reuse opportunity cannot be found that coincides with the timing of the dredging projects.

The LA–2 ODMDS is approximately 5.9 nmi (11 km) offshore from the entrance to the Port of Los Angeles and approximately 8.4 nmi (15.5 km) from the entrance to the Port of Long Beach. The majority of suitable dredged material from USACE and port dredging projects in the Los Angeles County area that could not be beneficially reused has traditionally been disposed of at this site. When EPA originally designated LA–2 as a permanent disposal site in 1991, it evaluated the past history of disposal at the site up to that time and determined that significant adverse environmental impacts were unlikely to occur if similar levels of disposal continued there in the future.

Most dredging projects from the Orange County area have not used the LA–2 site because of the extra costs and increased environmental impacts (such as increased air emissions) associated with transporting dredged material the longer distance to this site. Instead, projects traditionally have used the LA–3 interim site, located approximately 4.3 nmi (8 km) offshore from Newport Bay. The LA–3 interim disposal site was originally scheduled to close down on January 1, 1997, but the interim designation was extended by Congress until January 1, 2000 to allow a major Newport Bay dredging project to be completed (the approximately 1,000,000 yd^3 [765,000 m^3] project to restore depth to sediment basins located in Upper Newport Bay). LA–3 was the only interim site in the nation specifically extended in this manner. Most recently, via the WRDA of 1999, Congress extended the status of LA–3 as an interim ODMDS for another three years (until December 31, 2002) to allow time for site designation studies and completion of the site designation EIS.

The proposed action provides for adequate, environmentally-acceptable ocean disposal site capacity for suitable dredged material generated in the greater Los Angeles County-Orange County area by permanently designating the LA–3 ODMDS.

C. Disposal Volume Limit

The proposed action is final designation of the LA–3 ODMDS managed at a maximum annual dredged material disposal quantity of 2,500,000 yd^3 (1,911,000 m^3) and the management of LA–2 at an increased maximum annual dredged material disposal quantity of 1,000,000 yd^3 (765,000 m^3) for the ocean disposal of dredged material from the Los Angeles and Orange County region. The need for ongoing ocean disposal capacity is based on historical dredging volumes from the local port districts, marinas and harbors, and federal navigational channels, as well as estimates of future average annual dredging.

D. Site Management and Monitoring Plan

Verification that significant impacts do not occur outside of the disposal site boundaries will be demonstrated through implementation of the Site Management and Monitoring Plan (SMMP) developed as part of the proposed action. The main purpose of the SMMP is to provide a structured framework for resource agencies to ensure that dredged material disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities (Section 103(a) of the MPRSA). Three main objectives for management of both the LA–2 and LA–3 ODMDSs are: (1) Protection of the marine environment; (2) beneficial use of dredged material whenever practical; and (3) documentation of disposal activities at the ODMDS.

The EPA and USACE Los Angeles District personnel will achieve these objectives by jointly administering the following activities: (1) Regulation and administration of ocean disposal permits; (2) development and maintenance of a site monitoring program; (3) evaluation of permit compliance and monitoring results; and (4) maintenance of dredged material testing and site monitoring records to insure compliance with annual disposal volume targets and to facilitate future revisions to the SMMP.

The SMMP includes periodic physical monitoring to confirm that the material that is deposited is landing where it is supposed to land, as well as chemical monitoring to confirm that the sediment chemistry conforms to the pre-disposal testing requirements. Other activities implemented through the SMMP to achieve these objectives include: (1) Regulating quantities and types of material to be disposed of, and the time, rates, and methods of disposal; and (2) recommending changes for site use, disposal amounts, or designation for a limited time based on periodic evaluation of site monitoring results.

E. Ocean Dumping Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)).

General Selection Criteria

1. The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation. Dredged material disposal activities have occurred at the LA–2 and LA–3 sites since the late 1970s. Historical disposal at the interim LA–3 site has not interfered with commercial or recreational navigation, commercial fishing, or sportfishing activities. Disposal at the LA–2 site, while located within the U.S. Coast Guard Traffic Separation Scheme, has not interfered with these activities. The continued use of these sites would not change these conditions.

2. Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery. The LA–2 and LA–3 sites are sufficiently removed from shore and limited fishery resources to allow water quality perturbations caused by dispersion of disposal material to be reduced to ambient conditions before reaching environmentally sensitive areas.

3. If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated. Evaluation of the LA–2 and LA–3 sites indicates that they presently do and would continue to comply with these criteria. Additionally, compliance will continue to be evaluated through implementation of the Site Monitoring and Management Plan (SMMP).

4. The sizes of the ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study. The LA–2 and LA–3 disposal sites are circular areas with a 3,000 ft (915 m) radius. The size of the sites has been determined by computer modeling to limit environmental impacts to the surrounding area and facilitate surveillance and monitoring operations. The designation of the size, configuration, and location of sites was determined as part of the evaluation study.

5. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used. The LA–3 site is located beyond the continental shelf, near a canyon on the continental slope, in an area that has been used historically for the disposal of dredged material. LA–3 is the only site in the vicinity that fully meets the above criteria. The LA–2 site, which has been permanently designated and has been used for the ocean disposal of dredged material since 1977, is located near the edge of the continental shelf at the 600 ft (183 m) contour.

Specific Selection Criteria

1. Geographical position, depth of water, bottom topography, and distance from the coast. Centered at 33°31′00″ N, 117°53′30″ W, the LA–3 site bottom topography is gently sloping from approximately 1,500 to 1,675 ft (460 to 510 m). Situated near the slope of a submarine canyon, the site center is approximately 4.5 nmi (8.5 km) from the mouth of Newport Harbor. The LA–2 site is at the top edge of the continental slope in approximately 360 ft to 1,115 ft (110 to 340 m) of water. Centered at 33°37′06″ N and 118°17′24″ W, the LA–2 site is located just south of the San Pedro Valley submarine canyon, approximately 5.9 nmi (11 km) from the entrance to Los Angeles Harbor.

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. The LA–2 and LA–3 sites are located in areas that are utilized for feeding and breeding of resident species. The LA–3 site is located in the gray whale migration route area, while the LA–2 site is located near the migration route. The California gray whale population was severely reduced in the 1800s and 1900s due to international whaling. However, protection from commercial whaling initiated in the 1940s has allowed the population to recover. There is no indication that disposal activities at LA–2 or LA–3 have adversely affected the gray whale. There are no known special breeding or nursery areas in the vicinity of the two disposal sites.

3. Location in relation to beaches and other amenity areas. The LA–3 site boundary is located over 3.5 nmi (6.5 km) offshore of the nearest coast in the Newport Beach and Harbor area. The LA–2 site boundary is located over 4.6 nmi (8.5 km) offshore from the nearest coast in the Palos Verdes area. Other beach areas are more distant. No adverse impacts from dredged material disposal operations are expected on these amenity areas.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packaging the waste, if any. Dredged material to be disposed of will be predominantly clays and silts primarily originating from the Los Angeles/Long Beach Harbor area and from Newport Bay and Harbor. Average annual disposal volumes at LA–3 range from 0 to approximately 337,000 yd^3 (0 to 258,000 m^3). Average annual disposal volumes at LA–2 range from 68,000 yd^3 to approximately 405,000 yd^3 (52,000 to 310,000 m^3).

Dredged material is expected to be released from split hull barges. No dumping of toxic materials or industrial or municipal waste would be allowed. Dredged material proposed for ocean disposal is subject to strict testing requirements established by the EPA and USACE, and only clean (non-toxic) dredged materials are allowed to be disposed at the LA–3 and LA–2 sites.

5. Feasibility of surveillance and monitoring. The EPA (and USACE for federal projects in consultation with EPA) is responsible for site and compliance monitoring. USCG is responsible for vessel traffic-related monitoring. Monitoring the disposal sites is feasible but somewhat complicated by topography. At LA–3, this complication is reduced by relocation of the permanent LA–3 site away from submarine canyons.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any. Currents and vertical mixing will disperse unconsolidated fine grained dredged sediments in the upper water column in the vicinity of ODMDS boundaries. Prevailing currents are primarily parallel to shore and flow along constant depth contours. Situated near the slope of a submarine canyon, the LA–3 area would be expected to receive sedimentation from erosion and nearshore transport into the canyon. At LA–2, some sediment transport offshore occurs due to slumping. Overall, the seabed at both sites are considered to be

non-dispersive, and sediments at both sites are expected to settle and remain offshore (as opposed to onshore).

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects). Localized physical impacts have occurred to sediments and benthic biota within the disposal sites due to past disposal operations. However, these activities have not resulted in long-term significant adverse impacts on the local environment. No interactions with other discharges are anticipated due to the distances from the discharge points.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean. Continued use of the LA–2 and LA–3 sites would result in minor interferences with commercial shipping and fishing vessels due to disposal barge traffic. Sites are not located within active oil or natural gas tracts. Continued disposal operations are not anticipated to adversely impact existing nearby oil and gas development facilities or tracts, or other socioeconomic resources. Overall, no significant interferences associated with this criterion are expected to result from continued use of the LA–2 and LA–3 sites.

9. Existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys. Water quality at the two disposal areas is good, but temporary, localized physical impacts have occurred to sediments and benthic ecology due to past disposal operations. Additionally, dredged material deposited in the past at the two disposal areas was chemically screened prior to disposal, and no known dredged material was disposed of for which chemical concentrations exceeded the range of chemical concentrations approved for ocean disposal.

10. Potentiality for the development or recruitment of nuisance species in the disposal site. The potential is low due to depth differences between the disposal sites and the likely sources of dredged material.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance. No known shipwrecks or other cultural resources occur within 2.7 nmi (5 km) of either the LA–2 or proposed LA–3 disposal sites.

F. Responses to Comments

The draft EIS was published in the **Federal Register** on January 21, 2005. A 45-day public review and comment period extended from the publication date through March 7, 2005. Six comment letters from various individuals, organizations, and agencies were received during the public review and comment period. In addition to the six comment letters, two public meetings were held on Wednesday, February 9, 2005, to solicit comments from interested parties. The comments, and associated responses, are summarized topically below.

Preferred Alternative

Two commenters concurred with the preferred alternative selected in the EIS.

Site Boundaries for the LA–3 ODMDS

One commenter questioned the boundary of the LA–3 site relative to the expected deposition pattern for dredged materials on the seafloor. The boundaries of the disposal site were chosen based on historical usage and to ensure that the majority of dredged material falls within the site boundaries given the 1,000 ft (305 m) radius disposal target for the disposal barges. Instantaneous sediment accumulation rates in excess of 1 ft (30 cm) per disposal event were assumed to result in the loss of the existing infaunal community. However, for assessing impacts, the EIS conservatively assumed that the infaunal community would be lost if the deposition rate exceeded 1 ft (30 cm) over a one-year period (this is conservative because the infaunal community is expected to rapidly recover for instantaneous deposition rates of less than 30 cm [1 ft] per disposal event). For all modeled scenarios, the worst-case 1 ft (30 cm) annual deposition contour lies well within the proposed 3,000 ft (915 m) radius site boundary. While a certain quantity of material is expected to settle outside of the site boundary, it is impractical and undesirable to extend the site boundary beyond this distance in an attempt to encompass all of the dredge material that will settle on the ocean bottom. Extending the site boundaries to encompass all of the material expected to settle on the ocean bottom would not alter the conclusion of significance (or lack thereof) concerning adverse impacts on the benthic community determined in the EIS. The 3,000 ft (915 m) radius is considered appropriate for site management purposes.

Estimates of Future Disposal Volumes Relative to Site Capacity

Two commenters asked for clarification of projected disposal volumes at the LA–2 and LA–3 sites. For both management and environmental impact considerations, the dredged material volume capacities specified for LA–2 and LA–3 were based on conservative estimates of the worst-case maximum amount of dredged material requiring ocean disposal in any given year. These estimates account for all known and reasonably anticipated capital and maintenance dredging projects in the Los Angeles and Orange County regions. It is unlikely that all potential projects would occur simultaneously in any given year. Therefore, the environmental impact analysis considered both the potential worst-case conditions and a more reasonable annual average condition.

For each potential dredging project, the Zone of Siting Feasibility (ZSF) Study evaluated whether disposal at the LA–2 or LA–3 ODMDSs would be economically feasible. For the purposes of establishing the maximum analyzed annual dredged material quantities that could be placed at LA–2 or LA–3, it was assumed that the Los Angeles County projects identified in the ZSF Study (USACE 2003a) would utilize LA–2, and that the Orange County projects would utilize LA–3.

Accordingly, based on the projected dredging volumes from the ZSF study, as well as site management considerations, the LA–2 site would be designated for an annual maximum of 1,000,000 yd^3 (765,000 m^3) and the LA–3 site would be designated for an annual maximum of 2,500,000 yd^3 (1,911,000 m^3). These maximum volume designations would accommodate the projected average annual volume requirements as well as provide for substantial annual volume fluctuations. Thus, the proposed rule will amend use of the existing LA–2 site for a higher maximum annual quantity to manage disposal of dredged material generated primarily from the Los Angeles County region, and it would permanently designate the LA–3 ODMDS with an annual quantity adequate to manage disposal of dredged material generated locally from projects to preserve the wetland habitat within the Upper Newport Bay and/or to maintain navigation channels at Newport and Dana Point Harbors.

However, it is acknowledged that designation of the sites does not preclude material generated in Orange County from being disposed of at LA–2 and vice versa. The choice of which site to use for the disposal of dredged material for individual dredging projects will be based on both economic and environmental factors. Decisions to allow ocean disposal for individual dredging projects are made on a case-by-case basis through the Marine Protection, Research and Sanctuaries

Act (MPRSA) Section 103 permitting process or its equivalent process for USACE's Civil Works projects and are subject to subsequent environmental review and documentation.

Site Monitoring and Management Plan

One commenter expressed support for the SMMP, but requested clarification on opportunities for public input to the SMMP. A SMMP has been developed that contains approaches for monitoring impacts to marine organisms, as well as verification of model predictions. Development of this SMMP was based on a review of other SMMPs prepared for similar ocean disposal sites.

The site monitoring reports described in the SMMP will be public documents that will be made available either through posting on the EPA website or direct mailing upon request. EPA will accept public comments regarding those reports, although there will not be a formal comment period. Additionally, the public will get an opportunity to comment on any SMMP implementation manual that is prepared by EPA subsequent to this action. No revisions to the SMMP as written are necessary to allow for this level of public input.

Relocation of the LA–3 ODMDS

One commenter indicated that relocating LA–3 was inconsistent with EPA site selection criteria. Although the permanent LA–3 site lies outside of the boundaries of the interim LA–3 site, the permanent site has been disturbed by historical dredged material disposal events. During reviews performed by the U.S. Geological Survey in 1998, a substantial amount of dredged material was noted outside of the interim site boundaries, particularly to the north, northeast, and southeast of the site. This was primarily attributed to disposal short of the targeted disposal area and errors in disposal generally resulting from inaccurate navigation.

Locating the permanent site boundary at the proposed location (away from the interim site) would redirect future dredged material disposal to an area historically used for disposal (and thus already undisturbed). Additionally, due to the nature of the local topography, the permanent site would be more amenable to monitoring via precision bathymetry. Further, as described in the SMMP, enhanced vessel tracking and monitoring will ensure that future disposal activities occur accurately within the designated target area of the permanent site.

Extension of the Interim Designation of LA–3

One commenter recommended extending the interim designation of LA–3. Congressional authorization for the interim site designation expired December 31, 2002. Requests for another extension would have to be made to Congress. In any event, the proposed action obviates the need for an extension. Thus, an extension of LA–3's interim site designation is not necessary.

Impacts to Areas of Special Biological Significance

One commenter noted potentials for impacts to Crystal Cove State Park and Area of Special Biological Significance (ASBS) if dredged materials placed at LA–3 were transported shoreward by currents. Dispersion and transport of dredged material disposed at LA–3 was modeled using measured current data collected in the disposal site and nearshore area. Results from the sediment fate model indicated that the dredged material disposed at LA–3 would settle within and immediately adjacent to the disposal site and no appreciable sediment transport toward the nearshore areas is anticipated, particularly given the depth of the LA–3 site. Water quality impacts during dredged material disposal operations at the LA–3 site will be temporary and localized and are not expected to extend to the shallower, nearshore area. Further, the location of the permanent LA–3 site relocates the site away from the Newport submarine canyon. Thus, any potential influences of currents within the canyon would be reduced at the permanent site.

G. Regulatory Requirements

1. Consistency With the Coastal Zone Management Act

Consistent with the Coastal Zone Management Act, EPA prepared a Coastal Zone Consistency Determination (CCD) document based on information presented in the site designation EIS. The CCD evaluated whether the proposed action—permanent designation of LA–3 and management of LA–2 at a higher annual disposal volume—would be consistent with the provisions of the Coastal Zone Management Act. The CCD was formally presented to the California Coastal Commission (Commission) at their public hearing June 9, 2005. The Commission staff report recommended that the Commission concur with EPA's CCD, which the Commission did by a unanimous vote. The proposed rule is consistent with the Coastal Zone Management Act.

2. Endangered Species Act Consultation

During development of the site designation EIS, EPA consulted with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (FWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of the ocean disposal sites to jeopardize the continued existence of any federally listed species. This consultation process is fully documented in the site designation EIS. NMFS and FWS concluded that use of the disposal sites for disposal of dredged material meeting the criteria for ocean disposal would not jeopardize the continued existence of any federally listed species.

H. Administrative Review

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'', and therefore subject to OMB review and other requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(a) 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;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed Rule should have minimal impact on State, local or tribal governments or communities. Consequently, EPA has determined that this proposed Rule is not a ''significant regulatory action'' under the terms of Executive Order 12866.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act

requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the proposed Rule would not establish or modify any information or record-keeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the proposed Rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The site designation and management actions would only have the effect of setting maximum annual disposal volume and providing a continuing disposal option for dredged material. Consequently, EPA's proposed action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the proposed Rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (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 year.

This proposed 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. The proposed Rule would only provide a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this proposed Rule.

5. 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 proposed 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. The proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13132 does not apply to this proposed Rule.

6. 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 proposed Rule does not have tribal implications, as specified in Executive Order 13175. The proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13175 does not apply to this proposed Rule.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This Executive Order (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, EPA 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 EPA. This proposed Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance With Administrative Procedure Act

This proposed 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. The proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, EPA concluded that this proposed Rule is not likely to have any adverse energy effects.

9. National Technology Transfer 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 Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: July 5, 2005.

Jane Diamond,

Acting Regional Administrator, EPA Region IX.

In consideration of the foregoing, EPA is amending part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (l)(11) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(1) * * *

(11) Newport Beach , CA, (LA–3) Ocean Dredged Material Disposal Site—Region IX.

(i) Location: Center coordinates of the circle-shaped site are: 33°31′00″ North Latitude by 117°53′30″ West Longitude (North American Datum from 1983), with a radius of 3,000 feet (915 meters).

(ii) Size: 0.77 square nautical miles.

(iii) Depth: 1,500 to 1,675 feet (460 to 510 meters).

(iv) Use Restricted to Disposal of: Dredged materials.

(v) Period of Use: Continuing use.

(vi) Restrictions: Disposal shall be limited to dredged materials that comply with EPA's Ocean Dumping Regulations.

[FR Doc. 05–14071 Filed 7–15–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 192, 193, and 195

[Docket No. PHMSA–05–21253]

RIN 2137–AD68

Pipeline Safety: Update of Regulatory References to Technical Standards

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to update the pipeline safety regulations to incorporate by reference all or parts of new editions of voluntary consensus technical standards to enable pipeline operators to utilize current technology, materials, and practices.

DATES: Comments on the subject of this proposed rule must be received on or before September 16, 2005.

ADDRESSES: Comments should reference Docket No. PHMSA–05–21253 and may be submitted in the following ways:

- DOT Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: DOT Docket Management System; 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.
- E–Gov Web site: *http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number PHMSA–05–21253 at the beginning of your comments. You should submit two copies of your comments, if you submit them by mail. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov* and may access all comments received by DOT at *http://dms.dot.gov.*

Note: All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided. Please see below for Privacy Act Statement.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. 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: Richard D. Huriaux, Director, Technical Standards at (202) 366–4565, by fax at (202) 366–4566, by e-mail at *richard.huriaux@.dot.gov,* or by mail at U.S. Department of Transportation, PHMSA/Office of Pipeline Safety, PHP–40, Room 2103, 400 Seventh Street, SW., Washington, DC 20590–0001. Copies of this document or other material in the docket can be reviewed by accessing the Docket Management System's home page at *http://dms.dot.gov.* General information on the pipeline safety program is available at the Office of Pipeline Safety Web site at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

This notice proposes to update the Federal pipeline safety regulations to all or parts of recent editions of the voluntary consensus technical standards that are currently incorporated by reference in the Federal pipeline safety regulations. It updates standards in 49 CFR part 192, ''Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,'' 49 CFR part 193, ''Liquefied Natural Gas Facilities: Federal Safety Standards,'' and 49 CFR part 195, ''Transportation of Hazardous Liquids by Pipeline.'' This update enables pipeline operators to utilize current technology, materials, and practices. The incorporation of the most recent editions of standards improves clarity, consistency and accuracy, and reduces unnecessary burdens on the regulated community.

Previous updates of the regulations to incorporate revised standards were issued on May 24, 1996 (61 FR 26121), June 6, 1996 (61 FR 2877), February 17, 1998 (63 FR 7721), and June 14, 2004 (69 FR 32886). PHMSA intends to issue periodic updates to ensure that the pipeline safety regulations reflect current practice and to improve compliance by the pipeline industry with safety standards.

Standards Incorporated by Reference

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) directs Federal agencies to use voluntary consensus standards in lieu of government-written standards whenever possible. Voluntary consensus standards are standards developed or adopted by voluntary bodies that develop, establish, or coordinate technical standards using agreed-upon procedures.

PHMSA participates in more than 25 national voluntary consensus standards committees. PHMSA's policy is to adopt voluntary consensus standards when they are applicable to pipeline design, construction, maintenance, inspection, and repair. In recent years, PHMSA has adopted dozens of voluntary consensus standards into its gas pipeline, hazardous liquid pipeline, and liquefied natural gas (LNG) regulations.

PHMSA has reviewed the voluntary consensus standards proposed for incorporation in whole or in part in 49 CFR parts 192, 193, and 195. The organizations responsible for producing these standards often update or revise them to incorporate the most current technology.

Parts 192, 193, and 195 incorporate by reference all or parts of 60 standards and specifications developed and published by technical organizations, including the American Petroleum Institute, American Gas Association, American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, National Fire Protection Association, Plastics Pipe Institute, and Pipeline Research Council International. The most recent editions of these documents represent a consensus on the best current practice and modern technology in the pipeline industry.

PHMSA proposes to adopt all or part of recent editions of 39 of the 60 standards referenced in the pipeline safety regulations.

New Editions of Standards

The following new editions of currently referenced standards are proposed for incorporation by reference (ibr) in Parts 192, 193, and 195. These new editions refine, correct, and clarify existing material in the standard, and generally do not introduce new topics. The list is organized by the standards-developing organization responsible for the standard. Each entry contains the title and a short description, along with what sections of the pipeline safety regulations reference the standard. In the interest of clarity, the regulatory language at the end of this document lists all standards incorporated by reference, including those updated standards described below.

American Gas Association (AGA)

- Purging Principles and Practices (3rd edition, 2001)
  Replaces current ibr: 1975 edition
  Referenced by 49 CFR 193.2513; 193.2517;193.2615

This new edition addresses principles and practices for purging pipelines of combustible gases. It provides new information for purging pipelines that was developed by the Gas Research Institute (GRI), now known at the Gas Technology Institute (GTI), and addresses improvements made in instruments for measurement of combustible gas mixtures. Chapters 1 through 4 cover the principles of gas purging. The remainder of the standard addresses the application of the principles to various situations.

American Petroleum Institute (API)

- API Specification 5L ''Specification for Line Pipe'' (43rd edition, 2004)
  Replaces current ibr: 3rd edition, 2000
  Referenced by 49 CFR 192.55(e); 192.113; Item I, Appendix B to part 192; 195.106(b)(1)(i); 195.106(e).

This specification provides standards for pipe suitable for use in conveying gas, water, and oil in both the oil and natural gas industries. This specification covers seamless and welded steel line pipe. It includes plain-end, threaded-end, and belled-end pipe, as well as through-the-flowline (TFL) pipe and pipe with ends prepared for use with special couplings.

- API Specification 5L1 ''Recommended Practice for Railroad Transportation of Line Pipe'' (6th edition, 2002)
  Replaces current ibr: 4th edition, 1990
  Referenced by 49 CFR 192.65(a)

The recommendations in this standard apply to the transportation on railcars of API Specification 5L steel pipe. It addresses allowable load stresses for pipe with diameter to thickness (D/t) ratios of 50 or more.

- API Specification 6D ''Specification for Pipeline Valves'' (Gate, Plug, Ball, and Check Valves) (22nd edition, 2002 including Supplement November 2004)
  Replaces current ibr: 21st edition, 1994
  Referenced by 49 CFR 192.145(a); 195.116(d)

This specification addresses technical requirements for most types of pipeline valves, and specifies standard valve types and categories. The document addresses requirements for materials, tests, marking, quality control, and shipping of valves.

- API Standard 620 ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' (10th edition, 2002)
  Replaces current ibr: 9th edition
  Referenced by 49 CFR 195.132(b)(2); 195.205(b)(2); 195.264(b)(1); 195.264(e)(3); 195.307(b)

This standard addresses the design and construction of large, field-assembled storage tanks for the storage of petroleum and petroleum products. It addresses low-pressure, carbon-steel above ground storage tanks, including flat bottom tanks. Standards are provided for materials, design, fabrication, inspection, testing, marking, and pressure control devices.

- API 1130 ''Computational Pipeline Monitoring'' (2nd edition, 2002)
  Replaces current ibr: 1st edition, 1995
  Referenced by 49 CFR 195.134; 195.444

This publication focuses on the implementation and testing of computational pipeline monitoring (CPM) systems that use algorithms to detect anomalies in pipeline operations. CPM systems assist pipeline controllers in detecting and responding to leaks and other hydraulic anomalies.

- API Standard 2000 ''Venting Atmospheric and Low-Pressure Storage Tanks'' (5th edition, 1998)
  Replaces current ibr: 4th edition, 1992
  Referenced by 49 CFR 195.264(e)(2); 195.264(e)(3)

This standard addresses the technical requirements for ensuring that dangerous gases are properly vented from atmospheric and low-pressure hazardous liquid storage tanks.

- API Standard 2510 ''Design and Construction of LPG Installations'' (8th edition, 2004)
  Replaces current ibr: 7th edition, 1995
  Referenced by 49 CFR 195.132(b)(3); 195.205(b)(3); 195.264(b)(2); 195.264(e)(4); 195.307(e); 195.428(c); 195.432(c)

This standard sets minimum requirements for the design and construction of facilities to handle and store liquefied petroleum gas (LPG) at terminals, refineries, and tank farms. It addresses design of LPG vessels and tanks, siting requirements, construction and piping specifications, procedures for loading and unloading, and fire protection.

American Society of Civil Engineers (ASCE)

- SEI/ASCE 7–02 ''Minimum Design Loads for Buildings and Other Structures'' (2002 edition)
  Replaces current ibr: 1995 edition
  Referenced by 49 CFR 193.2067

This standard gives requirements for dead, live, soil, flood, wind, snow, rain, ice, and earthquake loads on buildings and other structures. The wind load section has been updated to reflect current information on wind engineering.

American Society for Testing and Materials (ASTM)

- ASTM A53/A53M–04a (2004) ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless''
  Replaces current ibr: 1999 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to Part 192; 195.106(e)

This specification covers seamless and welded black and hot-dipped galvanized steel pipe in pipe sizes NPS ⅛ to 26, with nominal wall thickness as given in Table X2.2 and Table X2.3 of the standard.

- ASTM A106/A106M–04b (2004) ''Standard Specification for

Seamless Carbon Steel Pipe for High-Temperature Service''
Replaces current ibr: 1999 edition
Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)

This specification covers seamless carbon steel pipe for high-temperature service in pipe sizes ⅛ to 48, with nominal wall thickness as given in standard ASME B36.10M.

- ASTM A333/A333M–04a (2004) ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service''
  Replaces current ibr: 1999 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)

This specification covers nominal wall thickness for welded carbon and alloy steel pipe intended for use at low temperatures. Several grades of ferritic steel are included as listed in Table 1 of the standard.

- ASTM A372/A372M–03 (2003) ''Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels''
  Replaces current ibr: 1999 edition
  Referenced by 49 CFR 192.177(b)(1)

This specification covers relatively thin-walled forgings for pressure vessel use. Three types of carbon steel and six types of alloy steel are included. Provision is made for integrally forging the ends of vessel bodies made from seamless pipe or tubing.

- ASTM A381–96 (2001) ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems''
  Replaces current ibr: 1996 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)

This specification covers straight seam, double-submerged-arc-welded steel pipe suitable for high-pressure service, 16 in. (406 mm) and larger in outside diameter, with wall thicknesses from 5/16 to 1½ in. (7.9 to 38 mm). The pipe is intended for fabrication of fittings and accessories for compressor or pump-station piping.

- ASTM A671–04 (2004) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures''
  Replaces current ibr: 1996 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)

This specification covers electric-fusion-welded steel pipe with filler metal added, fabricated from pressure vessel quality plate of several analyses and strength levels and suitable for high-pressure service at atmospheric and lower temperatures. The specification covers pipe 16 inches (406 mm) in outside diameter or larger and of ¼ inch (6.4 mm) wall thickness or greater.

- ASTM A672–96 (2001) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures''
  Replaces current ibr: 1996 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)

This specification covers electric-fusion-welded steel pipe, fabricated from pressure-vessel quality plate of any of several analyses and strength levels and suitable for high-pressure service at moderate temperatures. The specification covers pipe 16 inches (406 mm) in outside diameter or larger with wall thicknesses up to 3 inches (75 mm).

- ASTM A691–98 (2002) ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures''
  Replaces current ibr: 1998 edition
  Referenced by 49 CFR 192.113; Item I, Appendix B to part 192; 195.106(e)

This specification covers electric-fusion-welded carbon and alloy steel pipe fabricated from pressure-vessel-quality plate of several analyses and strength levels and suitable for high-pressure service at high temperatures. The specification covers pipe 16 inches (405 mm) in outside diameter and larger with wall thicknesses up to 3 inches (75 mm).

- ASTM D638–03 (2003) ''Standard Test Method for Tensile Properties of Plastics''
  Replaces current ibr: 1999 edition
  Referenced by 49 CFR 192.283(a)(3); 192.283(b)(1)

This test method covers the determination of the tensile properties of unreinforced and reinforced plastics in the form of standard dumbbell-shaped test specimens when tested under defined conditions of pretreatment, temperature, humidity, and testing machine speed. This test method can be used for testing materials of any thickness up to 0.55 inch (14 mm).

- ASTM D2513–04a (2004) ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings''
  Current incorporated editions: 1987 edition for marking; 1999 edition for all other purposes
  Referenced by 49 CFR 192.191(b); 192.281(b)(2); 192.283(a)(1)(i); Item I, Appendix B to part 192

The adoption of ASTM D2513–04a, the 2004 edition, will replace the current split reference to D2513–87 for pipe marking purposes only and to D2513–1999 for all other purposes. This specification covers requirements and test methods for material dimensions and tolerances, hydrostatic burst strength, chemical resistance, and impact resistance of plastic pipe, tubing, and fittings for use in fuel gas mains and services for direct burial and reliner applications. The annexes provide specific requirements and test methods for each of the materials currently approved. The pipe and fittings covered by this specification are intended for use in the distribution of natural gas. Requirements for the qualifying of polyethylene systems for use with liquefied petroleum gas are covered in Annex A1 of the standard.

- ASTM D2517–00e1 (2000) ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings''
  Replaces current ibr: 2000 edition
  Referenced by 49 CFR 192.191(a); 192.281(d)(1); 192.283(a)(1)(ii); Item I, Appendix B to part 192

This specification covers requirements and methods of test for materials, dimensions and tolerances, hydrostatic-burst strength, chemical resistance, and longitudinal tensile properties, for reinforced epoxy resin pipe and fittings for use in gas mains and services for direct burial and insertion applications. The pipe and fittings covered by this specification are intended for use in the distribution of natural gas, petroleum fuels (propane-air and propane-butane vapor mixtures), manufactured and mixed gases where resistance to gas permeation, toughness, resistance to corrosion, aging, and deterioration from water, gas, and gas additives are required. Methods of marking are also given. Design considerations are discussed in Appendix X1 of the standard.

ASME International (ASME)

- ASME B16.5–2003 (May 2003) ''Pipe Flanges and Flanged Fittings''
  Replaces current ibr: 1996 edition
  Referenced by 49 CFR 192.147(a); 192.279

This standard covers pressure-temperature ratings, materials, dimensions, tolerances, marking, testing, and methods of designating openings for pipe flanges and flanged fittings. Included are: Flanges with

rating class designations 150, 300, 400, 600, 900, 1500, and 2500 in sizes NPS ½ through NPS 24. This standard is limited to flanges and flanged fittings made from cast or forged materials, and blind flanges and certain reducing flanges made from cast, forged, or plate materials.

- ASME B31G–1991 (R–2004) ''Manual for Determining the Remaining Strength of Corroded Pipelines''

  Replaces current ibr: 1991 edition

  Referenced by 49 CFR 192.485(c); 192.933(a); 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D)

This manual includes all pipelines that are covered by the ASME B31 pressure piping codes, i.e., ASME B31.4 (hazardous liquids); ASME B31.8 (gases); and ASME B31.11 (slurries). This manual is applicable only to determining the remaining strength of existing pipelines. New pipeline construction is covered under the applicable B31 codes.

- ASME B16.9–2003 (Feb. 2003) ''Factory-Made Wrought Steel Butt Welding Fittings''

  Replaces current ibr: 1993 edition

  Referenced by 49 CFR 195.118(a)

This standard covers overall dimensions, tolerances, ratings, testing, and markings for wrought carbon and alloy steel factory-made butt welding fittings of NPS ½ through 48. It does not cover low-pressure, corrosion-resistant butt welding fittings.

- ASME B31.4–2002 (Oct. 2002) ''Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids''

  Replaces current ibr: 1998 edition

  Referenced by 49 CFR 195.452(h)(4)(i)

This code prescribes requirements for the design, materials, construction, assembly, inspection, and testing of piping transporting liquids between producers' lease facilities, tank farms, natural gas processing plants, refineries, stations, ammonia plants, terminals (marine, rail and truck) and other delivery and receiving points.

- ASME B31.8–2003 (March 2003) ''Gas Transmission and Distribution Piping Systems''

  Replaces current ibr: 1995 edition

  Referenced by 49 CFR 192.619(a)(1)(i). 195.5(a)(1)(i); 195.406(a)(1)(i)

This code covers the design, fabrication, installation, inspection, testing, and safety aspects of operation and maintenance of gas transmission and distribution systems, including gas pipelines, gas compressor stations, gas metering, regulation stations, gas mains, and service lines up to the outlet of the customers' meter set assembly.

- ASME B31.8S–2004 (Jan. 2005) ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines''

  Replaces current ibr: 2002 edition

  Referenced by 49 CFR 192.903(c); 192.907(b); 192.911 Introductory text; 192.911(i); 192.911(k); 192.911(l); 192.911(m); 192.913(a) Introductory text; 192.913(b)(1); 192.917(a) Introductory text; 192.917(b); 192.917(c); 192.917(e)(1); 192.917(e)(4); 192.921(a)(1); 192.923(b)(2); 192.923(b)(3); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(2); 192.925(b)(3); 192.925(b)(4); 192.927(b); 192.927(c)(1)(i); 192.929(b)(1); 192.929(b)(2); 192.933(a); 192.933(d)(1); 192.933(d)(1)(i); 192.935(a); 192.935(b)(1)(iv); 192.937(c)(1); 192.939(a)(1)(i); 192.939(a)(1)(ii); 192.939(a)(3); 192.945(a)

This standard applies to on-shore gas pipeline systems constructed with ferrous materials. Pipeline system means all parts of physical facilities through which gas is transported, including pipe, valves, appurtenances attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders and fabricated assemblies. This standard is designed to provide the operator with the information necessary to develop and implement an effective integrity management program utilizing proven industry practices and processes.

- ASME Boiler and Pressure Vessel Code, Section I, ''Rules for Construction of Power Boilers'' (2004 edition)

  Replaces current ibr: 1998 edition

  Referenced by 49 CFR 192.153(a)

This section of the Boiler and Pressure Vessel Code addresses the design, construction, and testing of prefabricated pressure-containing components of pipeline systems.

- ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels'' (2004 edition)

  Replaces current ibr: 1998 edition as referenced in § 193.2321; 2001 edition for all other references

  Referenced by 49 CFR 192.153(a); 192.153(b); 192.153(d); 192.165(b)(3); 193.2321; 195.124; 195.307(e)

This division of the Boiler and Pressure Vessel Code, Section VIII contains rules for pressure vessel materials, design, fabrication, examination, inspection, testing, certification, and pressure relief. It includes requirements for pipe, fittings, and above ground breakout tanks that employ circumferential and longitudinal weld seams.

- ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Rules for Construction of Pressure Vessels'' (2004 edition)

  Replaces current ibr: 1998 edition as referenced in § 193.2321; 2001 edition for all other references

  Referenced by 49 CFR 192.153(b); 192.165(b)(3); 193.2321; 195.307(e)

This division of the Boiler and Pressure Vessel Code, Section VIII, provides an alternative to the standards of Division 1 and are more restrictive in the choice of materials, but permit higher design stresses subject to more complete examination, testing, and inspection.

- ASME Boiler and Pressure Vessel Code, Section IX, ''Welding and Brazing Qualifications'' (2004 edition)

  Replaces current ibr: 2001 edition

  Referenced by 49 CFR 192.227(a); Item II, Appendix B to part 192; 195.222

This section of the Boiler and Pressure Vessel Code establishes qualifications of welders and the procedures employed in welding. It includes qualification of procedures for each type of welding and qualification of welders for specific processes. A welder may be qualified by mechanical bending tests, or by radiography of test or production welds.

Gas Technology Institute (GTI)

- GTI–04/0049 (April 2004) ''LNG Vapor Dispersion Prediction with the DEGADIS Dense Gas Dispersion Model''

  Replaces current ibr: April 1988–July 1990 edition

  Referenced by 49 CFR 193.2059

The Federal regulations on LNG dispersion protection (49 CFR 193.2059) specify DEGADIS as an acceptable means of determining flammable vapor-gas dispersion distances. The program user supplies information on local conditions (*e.g.*, wind speed, temperature, humidity, surface roughness) and on the LNG spills (release rate, source radius). As described in the revised user manual, the DEGADIS program generates a description of the spatial and temporal development of a gas plume resulting from a release of LNG.

Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS)

- MSS SP–75–2004 ''Specification for High Test Wrought Butt Welding Fittings'' (1993).
  Replaces current ibr: 1993
  Referenced by 49 CFR 195.118(a)

This specification cover factory-made, seamless and electric fusion-welded carbon and low-alloy steel, butt-welding fittings for use in high pressure gas and oil transmission pipelines and gas distribution systems, including pipelines, compressor stations, metering and regulating stations, and gas mains. It addresses dimensions, tolerances, ratings, testing, materials, chemical and tensile properties, heat treatment, notch toughness, manufacturing, and marking.

- MSS SP–44–2001 ''Steel Pipe Line Flanges''
  Replaces current ibr: 1996
  Referenced by 49 CFR 192.147(a)

This standard was developed to address the continued use of steel pipe flanges in gas and hazardous liquid pipelines. Line pipe usually employs high-strength, cold worked, thin-wall carbon steel grade pipe, which necessitates special attention to the welding end of the flanges.

NACE International (NACE)

- NACE Standard RP0169–2002 ''Control of External Corrosion on Underground or Submerged Metallic Piping Systems''
  Replaces current ibr: 1996
  Referenced by 49 CFR 195.571

The standard provides criteria for cathodic protection to achieve control of external corrosion on buried or submerged metallic piping systems. It includes information on determining the need for corrosion control; piping system design; coatings; cathodic protection criteria and design; installation of cathodic protection systems; and control of interference currents.

National Fire Protection Association (NFPA)

- NFPA 30 (2003) ''Flammable and Combustible Liquids Code''
  Replaces current ibr: 1996
  Referenced by 49 CFR 192.735(b); 195.264(b)(1)

This standard addresses safety rules for working with and storing flammable and combustible liquids.

NFPA 58 (2004) ''Liquefied Petroleum Gas Code (LP-Gas Code)''
Replaces current ibr: 1998
Referenced by 49 CFR 192.11(a); 192.11(b); 192.11(c)

The LPG, or propane, standard provides safety requirements for the design, construction, installation and operation of all LPG systems and storage facilities. This edition includes improved safety and security measure for bulk sites and industrial plants, including clarified requirements for safety valves and operations and maintenance requirements for pipeline and refrigerated storage facilities.

- NFPA 59 (2004) ''Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants
  Replaces current ibr: 1998
  Referenced by 49 CFR 192.11(a); 192.11(b); 192.11(c)

This standard applies to the design, construction, location, installation, operation, and maintenance of refrigerated and non-refrigerated liquefied petroleum gas plants. Coverage of liquefied petroleum gas systems at utility gas plants extends to the point where LPG or a mixture of LPG and air is introduced into the utility distribution system. It addresses refrigerated and non-refrigerated containers, piping, valves, and equipment, structures housing LP-Gas distribution facilities; vaporizers, heat exchangers, and gas-air mixers; relief devices; operations and maintenance; and fire protection, safety, and security.

- NFPA 70 (June 2005) ''National Electrical Code''
  Replaces current ibr: 1996
  Referenced by 49 CFR 192.163(e); 192.189(c)

This code covers all aspects of the installation of electrical facilities, including the electrical wiring in gas pipeline vaults and compressor stations.

Plastics Pipe Institute, Inc. (PPI)

- PPI TR–3/2004 (2004) ''Policies and Procedures for Developing Hydrostatic Design Bases (HDB), Pressure Design Bases (PDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials'' (PPI TR–3–2000–Part E only, ''Policy for Determining Long Term Strength (LTHS) by Temperature Interpolation)''
  Replaces current ibr: 2000
  Referenced by 49 CFR 192.121

This report presents the updated policies and procedures used by the Hydrostatic Stress Board of the Plastics Pipe Institute to develop recommendations of long-term strength ratings for thermoplastic piping materials and pipe. These recommendations are published in PPI TR–4, ''PPI Listing of Hydrostatic Design Basis (HDB), Pressure Design Basis (PDB), Strength Design Basis (SDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials or Pipe'', a regularly updated document.

Rulemaking Analyses

Executive Order 12866

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget (OMB). This proposed rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This notice does not propose any regulation that:

(1) Has substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government;

(2) imposes substantial direct compliance costs on state and local governments; or

(3) preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13084

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, Consultation and Coordination with Indian Tribal Governments. Because the proposed rule would not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

Regulatory Flexibility Act

This rulemaking will not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. Rather, the proposed rule only incorporates the most recent editions of voluntary consensus standards that represent the current best practice in pipeline technology. Incorporating the most recent editions of these standards does not impose additional costs on small or large gas pipelines, hazardous liquid pipelines, or liquefied natural gas companies, and may reduce costs by contributing to even safer pipeline operations. Based on the facts available about the expected impact of this rulemaking, I certify, under Section 605

of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

We have analyzed the proposed rule changes for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the adoption of the latest standards moves pipeline construction, operations, and maintenance toward current best practices, we have preliminarily determined that the proposed changes would not significantly affect the quality of the human environment.

Paperwork Reduction Act

This proposed rule does not impose any new or revised information collection requirements.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rule.

List of Subjects

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety.

49 CFR Part 193

Incorporation by reference, Liquefied natural gas, Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety.

In consideration of the foregoing, PHMSA proposes to amend 49 CFR Parts 192, 193, and 195 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Paragraph (c) of § 192.7 would be revised to read as follows:

* * * * *

(c) The full titles of documents incorporated by reference, in whole or in part, are provided herein. The numbers in parentheses indicate applicable editions. For each incorporated document, citations of all affected sections are provided. Earlier editions of currently listed documents or editions of documents listed in previous editions of 49 CFR Part 192 may be used for materials and components designed, manufactured, or installed in accordance with these earlier documents at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR Part 192 for a listing of the earlier listed editions or documents.

(1) Incorporated by reference (ibr).

List of Organizations and Addresses.

(i) Pipeline Research Council International, Inc. (PRCI), c/o Technical Toolboxes, 3801 Kirby Drive, Suite 520, Houston, TX 77098.

(ii) American Petroleum Institute (API), 1220 L Street, NW., Washington, DC 20005.

(iii) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

(iv) ASME International (ASME), Three Park Avenue, New York, NY 10016–5990.

(v) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NE., Vienna, VA 22180.

(vi) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

(vii) Plastics Pipe Institute, Inc. (PPI), 1825 Connecticut Avenue, NW., Suite 680, Washington, DC 20009.

(viii) NACE International (NACE), 1440 South Creek Drive, Houston, TX 77084.

(ix) Gas Technology Institute (GTI), 1700 South Mount Prospect Road, Des Plaines, IL 60018.

(2) Documents incorporated by reference

Source and name of referenced material	49 CFR reference
A. Pipeline Research Council International (PRCI):	
(1) AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§§ 192.933(a); 192.485(c).
B. American Petroleum Institute (API):	
(1) API Specification 5L ''Specification for Line Pipe'' (API 5L, 43rd edition, 2004)	§§ 192.55(e); 192.113; Item I of Appendix B.
(2) API Recommended Practice 5L1 ''Recommended Practice for Railroad Transportation of Line Pipe'' (6th edition, 2002).	§ 192.65(a).
(3) API Specification 6D ''Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)'' (22nd edition, 2002 including Supplement 11/04)	§ 192.145(a).
(4) API 1104 ''Welding of Pipelines and Related Facilities'' (19th edition, 1999 including Errata October 31, 2001).	§§ 192.227(a); 192.229(c)(1); 192.241(c); Item II, Appendix B.
(5) API Recommended Practice 1162 ''Public Awareness Programs for Pipeline Operators'' (1st edition, December 2003).	§§ 192.616(a): 192.616(b); 192.616(c).
C. American Society for Testing and Materials (ASTM):	
(1) ASTM A53/A53M–04a (2004) ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless''.	§§ 192.113; Item I, Appendix B.
(2) ASTM A106/A106M–04b (2004) ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service''.	§ 192.113; Item I, Appendix B.
(3) ASTM A333/A333M–04a (2004) ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service''.	§ 192.113; Item I, Appendix B.
(4) ASTM A372/A372M–03 ''Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels''.	§ 192.177(b)(1).
(5) ASTM A381–96 (2001) ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems''.	§ 192.113; Item I, Appendix B.
(6) ASTM A671–04 (2004) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures''.	§ 192.113; Item I, Appendix B.
(7) ASTM A672–96 (2001) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures''	§ 192.113; Item I, Appendix B.

Source and name of referenced material	49 CFR reference
(8) ASTM A691–98 (2002) ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures''	§ 192.113; Item I, Appendix B.
(9) ASTM D638–03 (2003) ''Standard Test Method for Tensile Properties of Plastics'' (ASTM D638–1999).	§§ 192.283(a)(3); 192.283(b)(1).
(10) ASTM D2513–04a ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings''.	§§ 192.63(a)(1); 192.191(b); 192.281(b)(2); 192.283(a)(1)(i); Item 1, Appendix B.
(11) ASTM D2517–00e1 (2000) ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings''.	§§ 192.191(a); 192.281(d)(1); 192.283(a)(1)(ii); Item I, Appendix B.
(12) ASTM F1055–1998 ''Standard Specification for Electrofusion type Polyethylene Fittings for Outside Diameter Controller Polyethylene Pipe and Tubing''.	§ 192.283(a)(1)(iiii).
D. ASME International (ASME):	
(1) ASME B16.1 ''Cast Iron Pipe Flanges and Flanged Fittings''	§ 192.147(c).
(2) ASME B16.5–2003 ''Pipe Flanges and Flanged Fittings''	§§ 192.147(a); 192.279.
(3) ASME B31G–1991 (R–2004) ''Manual for Determining the Remaining Strength of Corroded Pipelines''.	§§ 192.485(c); 192.933(a).
(4) ASME B31.8–2003 ''Gas Transmission and Distribution Piping Systems''	§ 192.619(a)(1)(i);
(5) ASME B31.8S–2004 ''Supplement to B31.8 on Managing System Integrity of Gas Pipelines''.	§§ 192.903(c); 192.907(b); 192.911, Introductory text; 192.911(i); 192.911(k); 192.911(l); 192.911(m); 192.913(a) Introductory text; 192.913(b)(1); 192.917(a) Introductory text; 192.917(b); 192.917(c); 192.917(e)(1); 192.917(e)(4); 192.921(a)(1); 192.923(b)(2); 192.923(b)(3); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(2); 192.925(b)(3); 192.925(b)(4); 192.927(b); 192.927(c)(1)(i); 192.929(b)(1); 192.929(b)(2); 192.933(a); 192.933(d)(1); 192.933(d)(1)(i); 192.935(a); 192.935(b)(1)(iv); 192.937(c)(1); 192.939(a)(1)(i); 192.939(a)(1)(ii); 192.939(a)(3); 192.945(a).
(6) ASME Boiler and Pressure Vessel Code, Section I, ''Rules for Construction of Power Boilers'' (ASME Section I–2004).	§ 192.153(a).
(7) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels'' (ASME Section VIII Division 1–2004)	§§ 192.153(a); 192.153(b); 192.153(d); 192.165(b)(3).
(8) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Rules for Construction of Pressure Vessels: Alternative Rules'' (ASME Section VIII Division 2–2004).	§§ 192.153(b); 192.165(b)(3).
(9) ASME Boiler and Pressure Vessel Code, Section IX, ''Welding and Brazing Qualifications'' (ASME Section IX–2004).	§ 192.227(a); Item II, Appendix B.
E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP44–2001 ''Steel Pipe Line Flanges''	§ 192.147(a).
(2) [Reserved]	
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 ''Flammable and Combustible Liquids Code'' (NFPA 30–2003)	§ 192.735(b).
(2) NFPA 58 ''Liquefied Petroleum Gas Code (LP-Gas Code)'' (NFPA 58–2004)	§§ 192.11(a); 192.11(b); 192.11(c).
(3) NFPA 59 ''Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants'' (NFPA 59–2004).	§§ 192.163(e); 192.189(c).
(4) NFPA 70 ''National Electrical Code'' (NFPA 70–2005)	
G. Plastics Pipe Institute, Inc. (PPI):	
(1) PPI TR–3/2004 ''Policies and Procedures for Developing Hydrostatic Design Bases (HDB), Pressure Design Bases (PDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials'' (PPI TR–3–2000-Part E only, ''Policy for Determining Long Term Strength (LTHS) by Temperature Interpolation'').	§ 192.121.
H. NACE International (NACE):	
(1) NACE Standard RP0502–2002 ''Pipeline External Corrosion Direct Assessment Methodology''.	§§ 192.923(b)(1); 192.925(b) Introductory text; 192.925(b)(1); 192.925(b)(1)(ii); 192.925(b)(2) Introductory text; 192.925(b)(3) Introductory text; 192.925(b)(3)(ii); 192.925(b)(iv); 192.925(b)(4) Introductory text; 192.925(b)(4)(ii); 192.931(d); 192.935(b)(1)(iv); 192.939(a)(2).
I. Gas Technology Institute (GTI):	
(1) GRI 02/0057 ''Internal Corrosion Direct Assessment of Gas Transmission Pipelines_Methodology'' (2002).	§ 192.927(c)(2).

3. Section I of Appendix B to Part 192 would be revised to read as follows:

Appendix B to Part 192—Qualification of Pipe

I. Listed Pipe Specifications

API 5L—Steel pipe, ''API Specification for Line Pipe'' (ibr, *see* § 192.7)

ASTM A53/A53M—Steel pipe, ''Standard Specification for Pipe, Steel Black and Hot-Dipped, Zinc-Coated, Welded and Seamless'' (ibr, *see* § 192.7).

ASTM A106—Steel pipe, ''Standard Specification for Seamless Carbon Steel Pipe for High Temperature Service'' (ibr, *see* § 192.7).

ASTM A333/A333M—Steel pipe, ''Standard Specification for Seamless and Welded Steel Pipe for Low Temperature Service'' (ibr, *see* § 192.7).

ASTM A381—Steel pipe, ''Standard Specification for Metal-Arc-Welded Steel

Pipe for Use with High-Pressure Transmission Systems'' (ibr, *see* § 192.7).
ASTM A671—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Pipe for Atmospheric and Lower Temperatures'' (ibr, *see* § 192.7).
ASTM A672—Steel pipe, ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures'' (ibr, *see* § 192.7).
ASTM A691—Steel pipe, ''Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High Pressure Service at High Temperatures'' (ibr, *see* § 192.7).
ASTM D2513—Thermoplastic pipe and tubing, ''Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings'' (ibr, *see* § 192.7).
ASTM D2517—Thermosetting plastic pipe and tubing, ''Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings'' (ibr, *see* § 192.7).

* * * * *

PART 193—[AMENDED]

1. The authority citation for part 193 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, 60118; and 49 CFR 1.53

2. Section 193.2013 would be revised to read as follows:

193.2013 Matter incorporated by reference.

(a) Any document or portion thereof incorporated by reference in this part is included in this part as though it were printed in full. When only a portion of a document is referenced, then this part incorporates only that referenced portion of the document and the remainder is not incorporated. Applicable editions are listed in paragraph (c) of this section in parentheses following the title of the referenced material. Earlier editions listed in previous editions of this section may be used for components manufactured, designed, or installed in accordance with those earlier editions at the time they were listed. The user must refer to the appropriate previous edition of 49 CFR for a listing of the earlier editions.

(b) All incorporated materials are available for inspection in the Pipeline and Hazardous Materials Safety Administration, 400 Seventh Street, SW., Washington, DC, 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*. Documents incorporated by reference are available from the publishers as follows:

(1) American Gas Association (AGA), 400 North Capitol Street, NW, Washington, DC 20001.

(2) American Society of Civil Engineers (ASCE), Parallel Centre, 1801 Alexander Bell Drive, Reston, VA 20191–4400.

(3) ASME International (ASME), Three Park Avenue, New York, NY 10016–5990.

(4) Gas Technology Institute (GTI), 1700 S. Mount Prospect Road, Des Plaines, IL 60018.

(5) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

(c) Documents incorporated by reference.

Source and name of referenced material	49 CFR reference
A. American Gas Association (AGA):	
(1) ''Purging Principles and Practices'' (3rd edition, 2001)	§§ 193.2512; 193.2517; 193.2615.
B. American Society of Civil Engineers (ASCE):	
(1) SEI/ASCE 7–02 ''Minimum Design Loads for Buildings and Other Structures'' (2002)	§ 193.2067.
C. ASME International (ASME):	
(1) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1, ''Rules for Construction of Pressure Vessels'' (ASME Section VIII Division 1–2004).	§ 193.2321.
(2) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2, ''Rules for Construction of Pressure Vessels: Alternative Rules'' (ASME Section VIII Division 2–2004).	§ 193.2321.
D. Gas Technology Institute (GTI):	
(1) GRI–89/0176 ''LNGFIRE: A Thermal Radiation Model for LNG Fires'' (January 29, 1990).	§ 193.2057.
(2) GTI–04/0049 ''LNG Vapor Dispersion Prediction with the DEGADIS Dense Gas Dispersion Model'' (April 2004).	§ 193.2059.
(3) GRI–96/0396.5 ''Evaluation of Mitigation Methods for Accidental LNG Releases, Volume 5: Using FEM3A for LNG Accident Consequence Analyses'' (April 1997).	§ 193.2059.
E. National Fire Protection Association (NFPA):	
(1) NFPA 59A ''Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)'' (2001).	§§ 193.2019; 193.2051; 193.2057; 193.2059; 193.2101; 193.2301; 193.2303; 193.2401; 193.2521; 193.2639; 193.2801.

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53

2. Section 195.3 would be amended by revising the last sentence of paragraph (b) introductory text, paragraphs (b)(1) through (7), and (c) to read as follows:

§ 195.3 Incorporation by reference.

* * * * *

(b) * * * Documents incorporated by reference are available from the publishers as follows:

(1) Pipeline Research Council International, Inc. (PRCI), c/o Technical Toolboxes, 3801 Kirby Drive, Suite 520, Houston, TX 77098.

(2) American Petroleum Institute (API), 1220 L Street, NW, Washington, DC 20005.

(3) ASME International (ASME), Three Park Avenue, New York, NY 10016–5990.

(4) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Park Street, NE, Vienna, VA 22180.

(5) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

(6) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

(7) NACE International, 1440 South Creek Drive, Houston, TX 77084.

(c) The full titles of publications incorporated by reference wholly or partially in this part are as follows. Numbers in parentheses indicate applicable editions:

Source and name of referenced material	49 CFR reference
A. Pipeline Research Council International, Inc. (PRCI):	
(1) AGA Pipeline Research Committee, Project PR–3–805, ''A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe'' (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.	§ 195.452(h)(4)(B).
B. American Petroleum Institute (API):	
(1) API Specification 5L ''Specification for Line Pipe'' (43rd edition, 2004)	§§ 195.106(b)(1)(i); 195.106(e).
(2) API Specification 6D ''Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)'' (22nd edition, 2002 including Supplement 11/04).	§ 195.116(d).
(3) API Specification 12F ''Specification for Shop Welded Tanks for Storage of Production Liquids'' (11th edition, 1994 as reaffirmed 5/02).	§§ 195.132(b)(1); 195.205(b)(2); 195.264(b)(1); 195.264(e)(1); 195.307(a); 195.565; 195.579(d).
(4) API 510 ''Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration'' (8th edition, 1997 incl. Addenda 1–4).	§§ 195.205(b)(3); 195.432(c).
(5) API Standard 620 ''Design and Construction of Large, Welded, Low-Pressure Storage Tanks'' (10th edition, 2002).	§§ 195.132(b)(2); 195.205(b)(2); 195.264(b)(1); 195.264(e)(3); 195.307(b).
(6) API 650 ''Welded Steel Tanks for Oil Storage'' (10th edition, 1998 including Addenda 1–3).	§§ 195.132(b)(3); 195.205(b)(1); 195.264(b)(1); 195.264(e)(2); 195.307(c); 195.307(d); 195.565; 195.579(d).
(7) API Recommended Practice 651 ''Cathodic Protection of Aboveground Petroleum Storage Tanks'' (2nd edition, December 1997).	§§ 195.565; 195.579(d).
(8) API Recommended Practice 652 ''Lining of Aboveground Petroleum Storage Tank Bottoms'' (2nd edition, December 1997).	§ 195.579(d).
.	
(9) API Standard 653 ''Tank Inspection, Repair, Alteration, and Reconstruction'' (3rd edition, 2001 including Addendum 1).	§§ 195.205(b)(1); 195.432(b).
(10) API 1104 ''Welding of Pipelines and Related Facilities'' (19th edition, 1999 including Errata October 31, 2001).	§§ 195.222; 195.228(b).
(11) API Standard 2000 ''Venting Atmospheric and Low-Pressure Storage Tanks'' (4th edition, September 1992).	§§ 195.264(e)(2); 195.264(e)(3).
(12) API 1130 ''Computational Pipeline Monitoring'' (2nd edition, 2002)	§§ 195.134; 195.444.
(13) API Recommended Practice 2003 ''Protection Against Ignitions Arising Out of Static, Lightning, and Stray Currents'' (6th edition, 1998).	§ 195.405(a).
(14) API Publication 2026 ''Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service'' (2nd edition, 1998).	§ 195.405(b).
(15) API Recommended Practice 2350 ''Overfill Protection for Storage Tanks In Petroleum Facilities'''' (2nd edition, 1996).	§ 195.428(c)
(16) API Standard 2510 ''Design and Construction of LPG Installations'' (8th edition, 2004).	§§ 195.132(b)(3); 195.205(b)(3); 195.264(b)(2); 195.264(e)(4); 195.307(e); 195.428(c); 195.432(c).
(17) API Recommended Practice 1162 ''Public Awareness Programs for Pipeline Operators'' (1st edition, December 2003).	§§ 195.440(a); 195.440(b); 195.440(c).
C. ASME International (ASME):	
(1) ASME B16.9–2003 ''Factory-Made Wrought Steel Butt Welding Fittings''	§ 195.118(a).
(2) ASME B31.4–2002 ''Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids''.	§ 195.452(h)(4)(i).
(3) ASME B31G–1991 (R–2004) ''Manual for Determining the Remaining Strength of Corroded Pipelines''.	§§ 195.452(h)(4)(i)(B); 195.452(h)(4)(iii)(D).
(4) ASME B31.8–2003 ''Gas Transmission and Distribution Piping Systems''	§ 195.5(a)(1)(i); 195.406(a)(1)(i).
(5) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 ''Rules for Construction of Pressure Vessels,'' (2004 edition).	§ 195.124; 195.307(e).
(6) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 ''Alternate Rules for Construction for Pressure Vessels'' (2004 edition).	§ 195.307(e).
(7) ASME Boiler and Pressure Vessel Code, Section IX ''Welding and Brazing Qualifications,'' (2004 edition).	§ 195.222.
D. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):	
(1) MSS SP–75–2004 ''Specification for High Test Wrought Butt Welding Fittings''	§ 195.118(a).
(2) [Reserved]	
E. American Society for Testing and Materials (ASTM):	
(1) ASTM A53/A53M–04a (2004) ''Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless''.	§ 195.106(e).
(2) ASTM A106/A106M–04b (2004) ''Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service''.	§ 195.106(e).
(3) ASTM A 333/A 333M–04a (2004) ''Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service''.	§ 195.106(e).
(4) ASTM A 381–96 (2001) ''Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems''.	§ 195.106(e).
(5) ASTM A 671–04 (2004) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures''.	§ 195.106(e).
(6) ASTM A 672–96 (2001) ''Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures''.	§ 195.106(e).
(7) ASTM A 691–98 (2002) ''Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures''.	§ 195.106(e).
F. National Fire Protection Association (NFPA):	
(1) NFPA 30 (2003) ''Flammable and Combustible Liquids Code''	§ 195.264(b)(1).
(2) [Reserved]	

Source and name of referenced material	49 CFR reference
G. NACE International (NACE): (1) NACE Standard RP0169–2002 "Control of External Corrosion on Underground or Submerged Metallic Piping Systems". (2) Reserved	§ 195.571.

Issued in Washington, DC on July 11, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–14003 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT68

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Central Population of California Tiger Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on the proposed designation of critical habitat for the Central population of the California tiger salamander and the availability of the draft economic analysis of the proposed designation of critical habitat. The draft economic analysis identifies potential costs of approximately $367 million over a 20-year period or $32.8 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until August 3, 2005.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825;

2. You may hand-deliver written comments and information to our office, at the above address, or fax your comments to 916/414–6710; or

3. You may send comments by electronic mail (e-mail) to: *fw1Central_cts_pch@fws.gov*. For directions on how to file comments electronically, see the "Public Comments Solicited" section. In the event that our Internet connection is not functional, please submit you comments by the alternate methods mentioned above.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at *http://sacramento.fws.gov/* or from the Sacramento Fish and Wildlife Office at the address and contact numbers above.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (69 FR 48570, August 10, 2004) and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat, as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of exclusion outweigh the benefits of including such area as part of critical habitat;

(2) Specific information on the amount and distribution of California tiger salamander (CTS) habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat;

(4) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of the CTS, and how many were either already in place or enacted for other reasons;

(5) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(6) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation of critical habitat;

(8) The draft economic analysis indicated potentially disproportionate impacts to areas within Alameda, Contra Costa, and Monterey Counties. Based on this information, we are considering excluding portions of these areas from the final designation per our discretion under section 4(b)(2) of the Act. We are specifically seeking comment along with additional information concerning our final determination for these three areas along with any other areas with potentially disproportionate impacts.

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; does our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses warrant further consideration, and is there other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(10) Whether the draft economic analysis appropriately identifies all costs that could result from the designation; and

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

(12) We are also considering excluding, and are requesting comments on the benefits of excluding or including in critical habitat the following areas from the final designation:

(a) The areas in east Contra Costa County covered by the Draft East Contra Costa Habitat Conservation Plan. This document will be out for public review soon and will be available on the Internet at *http://sacramento.fws.gov* (Central Valley Region Units 14, 15, 16 and portions of 17);

(b) The proposed critical habitat within the San Luis Refuge National Wildlife Complex (Central Valley Region Units 12 and 13) and the San Francisco Bay National Wildlife Complex (East Bay Region Unit 4); and

(c) The subunits within the Fort Hunter Liggett Army Installation (Central Coast Region Unit 5a and 5b).

An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

All previous comments and information submitted during the initial comment period for the August 10, 2004 proposed rule need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information we receive.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AT68'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, at the Sacramento Fish and Wildlife Office at the address listed under **ADDRESSES.**

Copies of the draft economic analysis are available on the Internet at: *http://sacramento.fws.gov/*. You may obtain copies of the proposed rule from the above address, by calling 916/414–6600.

Background

We published a proposed rule to designate critical habitat on August 10, 2004 (69 FR 48570). The proposed critical habitat totaling approximately 382,666 acres (ac) (154,860 ha (ha)) in 4 geographic regions in 47 units, is in the following 20 counties in central California: Alameda, Amador, Calaveras, Contra Costa, Fresno, Kern, Kings, Madera, Mariposa, Merced, Monterey, Sacramento, San Benito, San Joaquin, San Luis Obispo, Santa Clara, Solano, Stanislaus, Tulare, and Yolo. This proposed critical habitat does not include areas within Santa Barbara or Sonoma Counties. A final critical habitat designation for the California tiger salamander in Santa Barbara County was published on November 24, 2004 (69 FR 68568). We are also currently in the process of completing a proposed designation for the California tiger salamander in Sonoma County which will be published in the **Federal Register** at a future date. Per settlement agreement, we will submit for publication in the **Federal Register** a final critical habitat designation for the CTS in Sonoma County on or before December 1, 2005.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based on the August 10, 2004, proposed rule to designate critical habitat for the Central population of California tiger salamander, we have prepared a draft economic analysis of the proposed critical habitat designation.

The current draft economic analysis estimates the foreseeable economic impacts of the proposed critical habitat designation on government agencies and private businesses and individuals. The economic analysis identifies potential costs of approximately $367 million over a 20-year period or $32.8 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. The analysis measures lost economic efficiency associated with residential and commercial development, public projects and activities, such as economic impacts on transportation projects, the energy industry, University of California, Merced, and public lands such as those managed by the Department of Defense, Bureau of Land Management, Fish and Wildlife Service, and Bureau of Indian Affairs.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the Central population of California tiger salamander including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the California tiger salamander in essential habitat areas. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis

also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as a threatened species and considers those costs that may occur in the 20 years following the designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed California tiger salamander critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $283 to 367 million from 2005 to 2025. Overall, the residential and commercial industry is calculated to experience the highest of estimated costs. Of the 20 counties that are part of this current proposal, the four most impacted counties are Alameda, Contra Costa, Monterey and Santa Clara. Annualized impacts of costs attributable to the designation of critical habitat are projected to be between approximately $32.8 million.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the California tiger salamander would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the California tiger salamander and proposed designation of its critical habitat. We determined from our analysis that the small business entities that may be affected are firms in the new home construction sector. We estimated the number of affected small businesses, the number of houses built per small firm was calculated, and it appears that less than two small firms maybe be affected in Sacramento County, and one, or less than one, each in Contra Costa, Alameda, Monterey, Fresno, Santa Clara, and San Benito counties. These firms may be affected by activities associated with the conservation of the Central population of California tiger salamander, inclusive of activities associated with listing, recovery, and critical habitat. Critical habitat is not expected to result in significant small business impacts. Thus, in the development of our final rule, we will explore potential alternatives to minimize impacts to these affected small business entities. These alternatives may include the exclusion of all or portions of critical habitat units in these counties. As such, we expect that the final designation of critical habitat for the Central population of California tiger salamander will not result in a significant impact on small business entities.

Therefore, we believe that the designation for the Central population of California tiger salamander will not result in a disproportionate effect to these small business entities. However, we are seeking comment on potentially excluding areas from the final critical habitat designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in particular counties.

We determined that the critical habitat designation is expected to have the largest impacts on the market for

developable land. The proposed critical habitat designation for California tiger salamander occurs in a number of rapidly growing communities. Regulatory requirements to avoid onsite impacts and mitigate offsite affect the welfare of both producers and consumers. Two scenarios are considered. In the first scenario, avoidance requirements are assumed to reduce the stock of new housing. Given the importance of regulation of housing development even in the absence of critical habitat, this scenario is taken as the base case. In this scenario, critical habitat is expected to impose losses of over $367 million over the 20-year study period. An alternative scenario is constructed in which all avoidance requirements are accommodated through densification. In this case, welfare losses from critical habitat are $283 million over the 20-year study period.

These economic impacts of critical habitat designation vary widely among the 20 affected counties, and even within counties. The counties most impacted by the critical habitat designation include: Alameda ($131 million), Contra Costa ($91 million), Monterey ($67 million), Santa Clara ($23 million), and San Benito ($23 million). Further, economic impacts are unevenly distributed within counties. The analysis was conducted at the census tract level, resulting in a high degree of spatial precision.

Please refer to our draft economic analysis of this critical habitat designation for a more detailed discussion of potential economic impacts.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the Central population of CTS, the impacts on non-profits and small governments are expected to be negligible and are not examined in this analysis. There is no record of consultations between the Service and any of these governments since the Central population of CTS was listed in 2004. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the Central population of CTS within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a city's budget. Consequently, we do not believe that the designation of critical habitat for the Central population of CTS will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for Central population of CTS. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the Central population of CTS does not pose significant takings implications.

Author

The primary author of this notice is the staff of the Sacramento Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 13, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–14119 Filed 7–14–05; 1:13 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 050623166–5166–01; I.D. 061505B]

RIN 0648–AT49

Marine Mammals; Subsistence Taking of Northern Fur Seals; Harvest Estimates

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

ACTION: Notice of availability; request for comments.

SUMMARY: Pursuant to the regulations governing the subsistence taking of northern fur seals, this document summarizes the annual fur seal subsistence harvests on St. George and St. Paul Islands (the Pribilof Islands) for 2002 to 2004 and proposes annual estimates of fur seal subsistence needs for 2005 through 2007 on the Pribilof Islands, Alaska. NMFS solicits public comments on the proposed estimates.

DATES: Written comments must be received at the appropriate address or fax number by August 17, 2005.

ADDRESSES: Written comments on the harvest estimates should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS, Alaska Region, 709 W. 9th St., P.O. Box 21668, Juneau, AK 99802. Comments may be sent via facsimile (fax) to (907) 586–7012 or by email to *fursealharvest-PR–0648–at49@noaa.gov*.

Comments also may be submitted via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instruction on the website for submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Vos, (907) 271–5006, email *Daniel.Vos@noaa.gov*; Kaja Brix, (907) 586–7824, email *Kaja.Brix@noaa.gov*; or Tom Eagle, (301) 713–2322, ext. 105, email *Tom.Eagle@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

A draft Environmental Impact Statement is available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/seals/fur/deis0804.pdf*.

Background

The subsistence harvest from the depleted stock of northern fur seals, Callorhinus ursinus, on the Pribilof Islands, Alaska, is governed by regulations found in 50 CFR part 216, subpart F. The purpose of these regulations, published under the authority of the Fur Seal Act (FSA), 16 U.S.C. 1151, *et seq.*, and the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361, *et seq.*, is to limit the take of fur seals to a level providing for the subsistence needs of the Pribilof residents, while restricting taking by sex, age, and season for herd management purposes. To further minimize negative effects on the Pribilof Islands' fur seal population, the harvest has been limited to a 47–day season (June 23 to August 8).

There are several factors and conditions that affect the subsistence harvest of northern fur seals. Beginning in 2000, the take ranges have been discussed with each tribal government as part of the co-management relationship and agreement. As the history of estimating the subsistence needs of the Pribilof communities has been one of practical and social difficulties, the process to meet the take range regulation has evolved into the long-term acceptance of the ranges first established in 1987. These levels provide a degree of flexibility the communities feel comfortable with regarding changes and unanticipated needs within the community. The variability of the harvest occurs for many reasons. Weather conditions and availability of animals vary year by year. Demand may change. The timing restriction on the hunt overlaps with fishing seasons, and many of the hunters are also fishermen. Thus, they may be unavailable to hunt in certain years. If the harvest were reduced, the subsistence needs of the local communities may not be adequately met in certain years. The economic and logistical difficulties associated with small, rural and remote Alaskan communities such as those of St. Paul and St. George Islands, create a situation where subsistence use is an important source of food and a major component of the traditional needs of the communities.

Pursuant to the regulations governing the taking of fur seals for subsistence purposes, NMFS must publish a summary of the fur seal harvest for the previous 3–year period and an estimate of the number of seals expected to be taken in the subsequent 3–year period to meet the subsistence needs of the Aleut residents of the Pribilof Islands.

Summary of Harvest Operations and Monitoring 2002 to 2004

The annual harvests were conducted in the established manner and employed the standard methods required under regulations at 50 CFR 216.72. NMFS personnel monitored the harvest and worked closely with the tribal governments of each island to further improve the efficiency of the annual harvest and full utilization of the animals taken.

The reported northern fur seal subsistence harvests for St. Paul from 2002 to 2004 were 648, 522, and 493 respectively, and the reported northern fur seal subsistence harvests for St. George from 2002 to 2004 were 203, 132, and 123, respectively. The number of northern fur seals harvested on St. Paul Island from 1986 to 2004 ranged from 493 to 1,710, and the number harvested on St. George Island from 1986 to 2004 ranged from 92 to 319 seals. The average number of seals harvested during the past 10 years on St. Paul and St. George Islands, respectively, has been 958 seals (range: 493 to 1,591) and 193 seals (range: 121 to 260), (Table 1).

The tribal governments of both islands stress the full utilization of edible parts of harvested animals and have implemented a program that promotes full utilization of inedible seal parts for traditional arts, crafts, and other uses permitted under regulations at 50 CFR 216.73. The result has been an expanded use of these materials by the Aleut residents and increased fulfillment of the non-wasteful harvest requirements.

From 2002 through 2004, NMFS and the tribal governments of both islands worked closely to improve the conduct of the subsistence harvest and to promote full utilization of all the products thereof. Through the co-management process, (cooperative agreements were signed with St. Paul in 2000 and with St. George in 2001), NMFS and tribal authorities have developed a cooperative and collaborative working relationship, which increases local participation and responsibility regarding subsistence uses of fur seals and other marine mammals on and around the Pribilofs.

TABLE 1. SUBSISTENCE HARVEST LEVELS FOR NORTHERN FUR SEALS ON THE PRIBILOF ISLANDS, 1986–2004

Take Ranges			Actual Harvest Levels	
Year	St. Paul	St. George	St. Paul	St. George
1986	2,400–8,000	800–1,800	1,299	124
1987	1,600–2,400	533–1,800	1,710	92
1988	1,800–2,200	600–740	1,145	113
1989	1,600–1,800	533–600	1,340	181
1990	1,145–1,800	181–500	1,077	164
1991	1,145–1,800	181–500	1,645	281
1992	1,645–2,000	281–500	1,482	194
1993	1,645–2,000	281–500	1,518	319
1994	1,645–2,000	281–500	1,616	161
1995	1,645–2,000	281–500	1,525	260
1996	1,645–2,000	281–500	1,591	232
1997	1,645–2,000	300–500	1,153	227
1998	1,645–2,000	300–500	1,297	256
1999	1,645–2,000	300–500	1,000	193
2000	1,645–2,000	300–500	754	121
2001	1,645–2,000	300–500	597	184
2002	1,645–2,000	300–500	648	203
2003	1,645–2,000	300–500	522	132
2004	1,645–2,000	300–500	493	123
	.....	.....	.....	.....

Estimate of Subsistence Need for the Period 2005 to 2007

The projected subsistence harvest estimates are given as a range, the lower end of which may be exceeded if NMFS is given notice and the Assistant Administrator for Fisheries, NOAA, determines that the annual subsistence needs of the Pribilof Aleuts have not been satisfied. Conversely, the harvest can be terminated before the lower end of the range is reached if the annual subsistence needs of the Pribilof residents are determined to have been met or the harvest has been conducted in a wasteful manner.

For the 3–year period, 2005 to 2007, NMFS proposes no change to the past and current ranges of 1,645–2,000 for St. Paul Island and 300–500 for St. George Island. Retaining these levels will provide adequate flexibility for further refinement of annual harvest levels through the co-management process.

As described earlier in this document, if the Aleut residents of either island reach the lower end of this yearly harvest estimate and have unmet subsistence needs and no indication of waste, they may request an additional number of seals up to the upper limit of the respective harvest estimates. The residents of St. George and St. Paul Islands may substantiate any additional need for seals by submitting in writing the information upon which they base their decision that subsistence needs are unfulfilled. The regulations at 50 CFR 216.72(e)(1) and (3) require a suspension of the fur seal harvest for up to 48 hours once the lower end of the estimated harvest level is reached. The suspension is to last no more than 48 hours, followed either by a finding that the subsistence needs have been met or by a revised estimate of the number of seals necessary to satisfy the Aleuts' subsistence needs. The harvest may also be suspended if the harvest has been conducted in a wasteful manner. NMFS seeks public comments on the proposed estimates.

The harvest of fur seals is anticipated to be non-wasteful and in compliance with the regulations specified at 50 CFR 216.72 which detail the restrictions and harvest. NMFS will continue to monitor the harvest on St. Paul Island and St. George Islands during 2005 to 2007.

Classification

National Environmental Policy Act

NMFS prepared a draft EIS evaluating the impacts on the human environment of the subsistence harvest on northern fur seals. The draft EIS, which is available on the Internet (see Electronic Access) was subjected to public review (69 FR 53915, September 3, 2004), and the comments are being incorporated into a final EIS.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be not significant rule under Executive Order (E.O.) 12866. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed action would not have a significant economic impact on a substantial number of small entities. Because the harvest of northern fur seals on the Pribilof Islands, Alaska, is for subsistence purposes only, the estimate of subsistence need would not have an economic effect on any small entities. Therefore, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

This proposed action does not require the collection of information.

Executive Order 13132 – Federalism

This proposed action does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 13132 because this action does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nonetheless, NMFS worked closely with local governments in the Pribilof Islands, and these estimates of subsistence needs

were prepared by the local governments in St. Paul and St. George, with assistance from NMFS officials.

Executive Order 13084–Consultation and Coordination with Indian Tribal Governments

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments, or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This action does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this action.

Nonetheless, NMFS took several steps to work with affected tribal governments to prepare and implement the proposed action. These steps included discussions on subsistence needs and mechanisms to ensure that the harvest is conducted in a non-wasteful manner. NMFS signed cooperative agreements with St. Paul in 2000 and with St. George in 2001 pursuant to section 119 of the MMPA.

Dated: July 12, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–14094 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050630174–5174–01; ID 062005B]

RIN 0648–AT08

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 41

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Framework Adjustment 41 (FW 41) to the NE Multispecies Fishery Management Plan (FMP). FW 41 management measures were developed by the New England Fishery Management Council (Council) to expand participation in the existing Closed Area (CA) I Hook Gear Haddock Special Access Program (SAP) to all Northeast (NE) multispecies limited access Days-at Sea (DAS) vessels fishing with hook gear. The proposed action would also modify some of the management measures currently applicable to the Georges Bank (GB) Cod Hook Sector (Sector) vessels when declared into the CA I Hook Gear Haddock SAP by including modification of the season, haddock total allowable catch (TAC), and restricting vessels to fishing only inside the SAP area on trips declared into the SAP. In addition, NMFS proposes to clarify regulations pertaining to fishing in the Eastern U.S./Canada Haddock SAP Pilot Program Area. Specifically, during the time the SAP is open, eligible vessels could choose to fish in the SAP, and fish in the Eastern U.S./Canada Area west of CA II. This action is intended to mitigate the economic and social impacts resulting from Amendment 13 to the FMP and to meet the conservation and management requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by August 17, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

- E-mail: *FW41@NOAA.gov*. Include in the subject line the following: Comments on the Proposed Rule for Groundfish Framework 41.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the Proposed Rule for Groundfish Framework 41.''
- Fax: (978) 281–9135.

Copies of FW 41, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery B Mill 2, Newburyport, MA 01950. A summary of the IRFA is provided in the Classification section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Policy Analyst, phone: (978) 281–9220, fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

In order to increase the fishing effort on, and yield from healthy stocks, Amendment 13 to the FMP created a structure that allows for development of programs to target healthy fish stocks using Category B DAS. Amendment 13 included four specific SAPs, only two of which were approved and implemented on May 1, 2004. The regulations implementing FW 40–A (69 FR 67780, November 19, 2004) also created opportunities to use Category B DAS, including the CA I Hook Gear Haddock SAP. However, due to insufficient controls on GB cod mortality, which could have led to undermining fishing mortality objectives necessary to end overfishing and rebuild the GB cod stock, the measures for non-Sector vessels proposed in FW 40–A were found to be inconsistent with National Standard 1 and section 303(a)(1)(A) of the Magnuson-Stevens Act, and were thus disapproved. Specifically, the portion of the program pertaining to non-Sector vessels proposed to: Allow participants to fish in the SAP area using either an A or B DAS; count cod catch against the SAP's incidental cod TAC only when fishing on a B DAS; allow participants to fish both inside and outside the SAP area on the same trip under different gear restrictions; and allow non-DAS groundfish vessels to participate in the SAP. In contrast, regulations pertaining to the Sector vessels were relatively straightforward in that all cod caught by Sector vessels count toward the Sector's allocation of GB cod, and the same gear restrictions apply both inside and outside of the SAP area on a single trip. The purpose of this action is to revise the CA I Hook Gear Haddock SAP rules to allow participation by non-Sector vessels. This special access program would help mitigate the economic and social impacts caused by the fishing effort reductions that resulted from implementation of Amendment 13.

FW 41 would provide access to the CA I Hook Gear Haddock SAP for all limited access NE multispecies DAS permit holders, including both Sector and non-Sector vessels. Working together, Sector and non-Sector vessel owners who plan to participate in the program have suggested measures to minimize the potential for a derby (race to catch limited quota) fishery. The Council, in FW 41, has specified that

future discussions of measures to minimize the potential of a derby in the CA I Hook Gear Haddock SAP would not necessarily be based on these measures, nor would these proposed measures necessarily constitute a historical basis for future allocation decisions.

Proposed Measures

CA I Hook Gear Haddock SAP

Non-Sector Vessels

FW 41 proposes to modify the CA I Hook Gear Haddock SAP by allowing access to this SAP when fishing under a B DAS (either Regular B or Reserve B) for vessels with a NE multispecies limited access DAS permit, provided the vessel fishes with demersal longline or tub trawl gear. In order to minimize the potential of a derby fishery, participation in the SAP for non-Sector vessels would be restricted to a participation period of November 16 - December 31 for the 2005 fishing year, unless otherwise notified by NMFS. The participation period would alternate each year between Sector and non-Sector participants such that in fishing year 2006 non-Sector vessels would fish during a participation period of October 1 - November 15. The currently approved haddock TAC of 1,000 mt for the SAP would be divided evenly into two quota periods such that the haddock TAC for each quota period would be 500 mt. The SAP would close to all participants when the Administrator, Northeast Region, NMFS (Regional Administrator) projects that the haddock TAC (landings and discards) has been caught. The Regional Administrator may also adjust the start of the second participation period if the 500–mt haddock quota for the first participation period is harvested prior to November 15. Additionally, the Regional Administrator may adjust the 500–mt quota for the second participation period to account for under- or over-harvest of the 500–mt haddock quota (landings and discards) that occurred in the first participation period. Vessels fishing on a trip in which they have declared into the Regular B DAS Pilot Program would be prohibited from fishing in this SAP on the same trip.

In order to ensure that any catch of GB cod taken while using a Category B DAS would not threaten mortality objectives of Amendment 13, non-Sector vessels in the CA I Hook Gear Haddock SAP would be allocated a portion of the GB cod incidental catch TAC. Under this proposed rule, the GB cod incidental catch TACs would be 50 percent, 34 percent, and 16 percent for the Regular B DAS Pilot Program, the Eastern U.S./Canada SAP, and the CA I Hook Gear Haddock SAP, respectively. Additionally, for the 2005 fishing year the Regional Administrator may estimate any uncaught GB cod incidental catch TAC from the first quarter of the Regular B DAS Pilot Program and add that amount to the second quarter GB cod incidental catch TAC for the Regular B DAS Pilot Program. This action is necessary as the effective date for FW 41, if approved, would occur after the start of the Eastern U.S./Canada Haddock SAP, and the first period for the Regular B DAS Pilot Program (i.e., May 1, 2005). This would leave the second period of the Regular B DAS Pilot Program to be reduced by 15.5 mt and allocated to the CA I Hook Gear Haddock SAP. This figure, 15.5 mt, is equivalent to 16 percent of the GB cod incidental catch TAC at the beginning of the 2005 fishing year (97 mt). This in-season adjustment would only be made for the GB cod incidental catch TAC in the 2005 fishing year.

In order to enable the NMFS Observer Program to administer the deployment of observers in the SAP, a vessel intending to participate in this SAP would be required to notify NMFS by September 1 of its intention to fish in the program that year. This provision was approved for Sector vessels under FW 40–A and would be extended to non-Sector vessels in FW 41. This information is intended to provide the NMFS Observer Program with an estimate of the total number of vessels that intend to participate in the SAP and to plan observer coverage accordingly. If a vessel does not notify the NMFS Observer Program of its intent to participate in the SAP by the required date, it would not be allowed to participate in the SAP during that fishing year. Vessels would be required to notify the NMFS Observer Program by telephone at least 72 hours prior to leaving on a trip to the SAP, and would be required to provide the following information: Vessel name; contact name for coordination of observer deployment; telephone number of contact; and date, time and port of departure. The Regional Administrator would retain the authority to close the CA I Hook Gear Haddock Access Area for the duration of the season if the level of observer coverage is insufficient to project whether continuation of the SAP would undermine the achievement of the objectives of the FMP or the CA I Hook Gear Haddock SAP.

Non-Sector vessels participating in the SAP would be required to use Category B (either Regular B or Reserve B) DAS. Similar to the Sector vessels, all non-Sector vessels participating in this SAP would be required to be equipped with an approved Vessel Monitoring System (VMS). Vessels would be required to declare into the CA I Hook Gear Haddock SAP via VMS and specify whether Regular B DAS or Reserve B DAS would be used, prior to leaving port on a trip into the SAP. All non-Sector vessels would be required to report their catches (landings and discards) of haddock and cod daily via VMS. Non-Sector vessels that have declared into the CA I Hook Gear Haddock SAP would be prohibited from fishing both inside and outside the SAP area on the same trip and would be exempt from the current limitation on the number of hooks fished inside the SAP area. Non-Sector vessels would be subject to a cod possession and landing limit of 1,000 lb (453.6 kg) per trip. Vessels would not be permitted to discard legal-sized cod prior to reaching the catch limit, and would be required to end their trip if the cod trip limit is achieved or exceeded. There is no flipping provision proposed for this SAP (i.e., vessels may not switch from using Category B to Category A DAS on a trip). For species other than cod, non-Sector vessels would be required to comply with the possession and trip limit restrictions currently specified in the regulations. When the Regional Administrator projects that either the cod incidental catch TAC, or the haddock TAC (landings and discards) has been caught for the CA I Hook Gear Haddock SAP, the SAP would close for the remainder of the fishing period.

Sector Vessels

There are two proposed changes to the current provisions for Sector vessels participating in the CA I Hook Gear Haddock SAP. Under this action, Sector vessels that have declared into the CA I Hook Gear Haddock SAP would be prohibited from fishing both inside and outside the SAP area on the same trip, and Sector vessels would be restricted to a participation period of October 1 - November 15 in the 2005 fishing year. For subsequent fishing years, starting in fishing year 2006, the participation period would alternate each year between Sector and non-Sector participants so that in fishing year 2006, for example, Sector vessels would fish during a participation period of November 16 - December 31. The purpose of the prohibition on fishing inside and outside of the SAP on the same fishing trip is to ensure proper accounting of where fish are caught and ensure the ability of the regulations to be enforced. The provision also would maintain equity between Sector and

non-Sector vessels participating in the SAP. Restricting access to the SAP to a specific period of time within the season is meant to minimize the potential of a derby fishery between Sector and non-Sector vessels. The current haddock TAC of 1,000 mt for the SAP would be divided evenly into two quota periods such that the haddock TAC for each quota period would be 500 mt. This action also proposes to remove the requirement that Sector vessels shall be required to pay for observer coverage if the Regional Administrator determines that funding for observers is inadequate to provide sufficient coverage. This requirement would be removed because it was determined that no additional regulations were necessary to ensure adequate observer coverage for Sector vessels. As stated previously, the Regional Administrator may adjust the start of the second quota period if the 500–mt haddock quota for the first quota period is harvested prior to November 15. Additionally, the Regional Administrator may adjust the 500–mt quota for the second quota period to account for under- or over-harvest of the 500–mt haddock quota (landings and discards) that occurred in the first quota period. Other provisions for Sector vessels fishing in the SAP would remain unchanged.

Finally, current regulations pertaining to access to the Eastern U.S./Canada Haddock SAP Pilot Program and the Eastern U.S./Canada Management Area would be clarified. Regulations at § 648.85(a)(1) and (b)(8) allow fishing in the Eastern U.S./Canada Management Area, and allow fishing in the Eastern U.S./Canada Haddock SAP Area, respectively, and specify rules that pertain to each area. According to these regulations, during the time the SAP is open, eligible vessels may choose to fish in the SAP, and to fish in the Eastern U.S./Canada Area west of CA II. In contrast to these regulations, the regulations at § 648.14(a)(143) and (a)(148) could be broadly interpreted to prohibit fishing in any part of the SAP unless fishing under the SAP rules. The prohibitions were inadvertently written in a broad way that is inconsistent with § 648.85(a)(1) and (b)(8) and the intent of NE Multispecies Framework Adjustment 40–A. These regulations would be clarified through this proposed action.

Classification

At this time, NMFS has not determined that the framework adjustment (FW 41) that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 603, an IRFA has been prepared, which describes the economic impacts that this proposed rule, if adopted, would have on small entities. A description of the reasons why this action is being considered, as well as the objectives of and legal basis for this proposed rule is found in the preamble to this document. There are no Federal rules that may duplicate, overlap, or conflict with the proposed rule. The proposed action would modify the existing specification of GB cod incidental catch TACs to the various programs that have such TACs, modify the management measures for the CA I Hook Gear Haddock SAP to allow participation of non-Sector vessels, and implement measures to minimize potential derby fishing behavior. Current regulations under the FMP allow the development of such measures, provided they are consistent with the FMP objectives.

The proposed alternative to modify the GB cod incidental TACs and provide non-Sector vessel access to the SAP was compared to the No Action alternative. The proposed alternative to minimize derby fishing behavior was compared with both the No Action alternative and an alternative that would limit vessels to starting only two trips into the SAP per week.

The No Action alternative would result in the continuation of the management measures implemented by FW 40–A. Only Sector vessels would be eligible to fish in the SAP, no incidental GB cod TAC would be allocated to the SAP, and there would be no measures to minimize derby fishing behavior.

Description and Estimate of the Number of Small Entities to which this Proposed Rule would Apply

The proposed action would implement changes with the potential to affect any vessel holding a NE multispecies limited access permit (with an allocation of DAS; approximately 1,000 vessels). It is very likely, however, that the proposed measures would impact substantially less than the total number of such permit holders, because the SAP requires participants to use only hook gear, there are relatively few vessels that fish with hook gear, and it is not likely that many vessel owners would switch from using another type of fishing gear to hook gear. Based on this, the EA estimates that there would be about 60 vessels in total (Sector and non-Sector) that would participate in this SAP.

The Small Business Administration (SBA) size standard for small commercial fishing entities is $ 3.5 million in gross receipts and would apply to NE multispecies limited access permit holders. Data analyzed for Amendment 13 indicated that the maximum gross receipts for any single commercial fishing vessel in the NE multispecies fishery for the period 1998 to 2001 was $ 1.3 million. For this reason, each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities would fall under the SBA size standard for small commercial fishing entities, and there would be no disproportionate impacts between small and large entities. For the purposes of Executive Order 12866, the proposed action would not be considered significant, because the annual effect on the economy would not meet the threshold criteria of $100 million and it would not have an adverse material affect on any sector of the economy, productivity, jobs, the environment, public health, or safety, or state, local, or tribal governments or communities.

Economic Impacts of this Proposed Action

The proposed action would reduce the allocation of GB cod to the Regular B DAS Pilot Program in order to establish a GB cod incidental catch TAC for the CA I Hook Gear Haddock SAP. This reallocation of incidental TAC could result in increased economic benefits if the SAP results in a higher yield at lower cost than the Regular B DAS Pilot Program. However, unless the same vessels are the beneficiaries of the reallocation, allowing participation by non-Sector vessels in this SAP would result in a transfer of benefits from one group of vessels to another. The magnitude of the impacts will depend upon the amount of GB cod incidental TAC that is harvested under the Regular B DAS Pilot Program and the timing of the implementation of the SAP measures. There are minimal data to determine the specific impacts of the reallocation on the Regular B DAS Pilot Program or the fishery as a whole. During the first quarter of the 2005 fishing year the Regular B DAS Pilot Program caught a substantial portion of the GB cod incidental catch TAC. This suggests that such a reallocation may limit the Regular B DAS Pilot Program, however, the level of incidental catch during the CA I Hook Gear Haddock SAP season may be different.

The proposed action would implement measures that would allow non-Sector vessels to use hook gear to target haddock in the SAP. In the short term, this opportunity may be important to the profitability of participating vessels and would provide mitigation of the short-term adverse effects of the DAS reductions implemented by Amendment 13. The beneficiaries of the proposed action would be limited to individuals that already use longline gear and individuals that could profitably convert to the use of bottom longline gear. Based upon an estimate of the number of vessels that would join the Sector in 2005, and empirical information, the EA estimates that 40 Sector vessels and 20 non-Sector vessels would participate in the SAP.

Estimated total revenue for Sector and non-Sector participants is $ 1.3 million and $ 0.6 million, respectively. Estimated surplus per vessel for Sector and non-Sector participants is $ 19,300 and $ 16,600, respectively. These returns are based upon the assumptions of 5,000 lb (2,268 kg) of haddock kept per trip, an incidental cod catch TAC of 14 mt, a total of 441 total trips into the SAP, and the implementation of measures to mitigate derby fishing behavior.

The benefits that would accrue to Sector and non-Sector vessels depend in part on whether measures to prevent a derby are implemented. Dividing the SAP into two time periods and limiting fishing in each period to either Sector or non-Sector vessels reduces benefits to Sector vessels, but provides benefits to non-Sector vessels at the same level. Without measures to minimize the potential of derby fishing, the estimated surplus per participating Sector vessel would be $29,300 because the Sector vessels would not be limited to a maximum haddock catch of 500 mt. Sector participants would be foregoing potential economic gains in order to minimize derby fishing behavior and competition for the haddock TAC. The economic analysis also noted that there are potential costs of derby fishing, such as price depression, loss of gear through gear conflicts, and the costs of unsafe fishing practices.

In contrast, the non-Sector vessels may be limited by the GB cod incidental catch TAC, with or without measures to address derby fishing. In other words, the constraining factor on the catch of non-Sector vessels may be the GB cod incidental catch TAC, and not the haddock TAC. If non-Sector participants are able to reduce incidental catches of cod and take all of the haddock available to them, the estimated net return per vessel would double.

Dividing the season into two periods has other implications due to the seasonal variations in the availability and price of haddock. Based upon experimental data, catch rates of haddock may be highest in the beginning of the SAP season and subsequently decline, while average haddock prices may increase over the SAP season. The increase in average price may mitigate the effect of a reduced catch rate in the latter part of the SAP season.

It is likely that most or all participating vessels will experience positive economic results. The potential economic benefits of the proposed measures would represent only a small increase in the total value of the Northeast region groundfish sales, but because the landings would be concentrated on Cape Cod, MA (due to the location of Sector members), the SAP could significantly increase landings in Cape Cod over fishing year 2003 levels. It is unknown where the economic benefits that result from the participation of non-Sector vessels will accrue.

Economic Impacts of Alternatives to the Proposed Action

Under the No Action alternative, the regulations for the CA I Hook Gear Haddock SAP would be unchanged, and the only vessels that could participate in the SAP would be members of the Sector. The economic benefits for Sector vessels would be greater under the No Action alternative, but no benefits would accrue to vessels that are not members of the Sector. The net amount of benefits under the No Action alternative would be similar to the amount of economic benefits under the proposed action because, in both cases, the total haddock TAC for the SAP would be the same. Economic benefits of the proposed alternative would be distributed more widely than for the No Action alternative.

Under the No Action alternative, the allocation of GB cod to the Regular B DAS Pilot Program would not be reduced because there would be no GB cod incidental catch TAC established for the CA I Hook Gear Haddock SAP. The transfer of benefits from one group of vessels to another would not occur.

With respect to the measures to reduce derby behavior, the No Action alternative would result in greater economic benefits to the Sector vessels, but such benefits may be reduced by the potential costs that result from a derby-style fishery (i.e., price depression, increased costs as a result of gear conflicts, and potential safety costs). The non-selected alternative would have limited all participating vessels to taking no more than two trips into the SAP in a calendar week. This limitation potentially would have created an economic advantage for those vessels that are able to take longer, multi-day trips, and therefore would have tended to favor large vessels.

Public Reporting Burden

This proposed rule contains collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) that have been approved by OMB under OMB control numbers 0648–0501 and 0648–0502. The current expiration date for the reporting requirements under this collection is June 30, 2008. Public comment on this collection of information was solicited in the proposed rule to Framework Adjustment 40–A to the NE Multispecies FMP (69 FR 55388, September 14, 2004) and in the renewal of the collection of information for OMB control number 0648–0501 (69 FR 61344, October 18, 2004) and OMB control number 0648–0502 (69 FR 61346, October 18, 2004). The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The approved reporting requirements for this proposed rule and the estimated average time for a response are as follows:

1. VMS purchase and installation, OMB #0648–0501 (1 hr/response);
2. VMS proof of installation, OMB #0648–0501 (5 min/response);
3. Automated VMS polling of vessel position once per hour when fishing in the Regular B DAS pilot program, OMB #0648–0501 (5 sec/response);
4. Automated VMS polling of vessel position once per hour when fishing in the CA I Hook Gear Haddock SAP, OMB #0648–0501 (5 sec/response);
5. SAP area and DAS use declaration via VMS prior to each trip into a SAP, OMB #0648–0501 (5 min/response);
6. Revised estimate of the area and DAS use declaration via VMS prior to each trip into the CA I Hook Gear Haddock SAP, OMB #0648–0501 (5 min/response);
7. Revised estimate of the notice requirements for observer deployment prior to every trip into the CA I Hook Gear Haddock SAP, OMB #0648–0202 (2 min/response);

8. Daily electronic catch and discard reports of stocks of concern when fishing in the CA I Hook Gear Haddock SAP, OMB #0648–0502, (0.25 hr/response).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 13, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.10, paragraphs (b)(3)(i)(C) and (b)(3)(i)(D) are revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(C) Fish under the Regular B DAS Pilot Program specified at § 648.85(b)(6); or

(D) Fish in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7).

* * * * *

3. In § 648.14, paragraphs (a)(143), (a)(148), (c)(67), (c)(68), (c)(70), and (c)(73) through (c)(77) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(143) If fishing under a NE multispecies DAS, fish in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), unless declared into the program in accordance with § 648.85(b)(8)(v)(D).

* * * * *

(148) If fishing under a NE multispecies DAS in the Eastern U.S./Canada Haddock SAP Pilot Program specified in § 648.85(b)(8), in the area specified in § 648.85(b)(8)(ii), during the season specified in § 648.85(b)(8)(iv), fail to comply with the restrictions specified in § 648.85(b)(8)(v).

* * * * *

(c) * * *

(67) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7)(vi), whichever is applicable.

(68) If fishing in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), fail to comply with the requirements and conditions specified in § 648.85(b)(7)(iv), and (b)(7)(v) or (b)(7) (vi), whichever is applicable.

* * * * *

(70) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the DAS use restrictions specified in § 648.85(b)(7)(iv)(A), and (b)(7)(v)(A) or (b)(7)(vi)(A), whichever is applicable.

* * * * *

(73) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the VMS declaration requirement specified in § 648.85(b)(7)(iv)(D).

(74) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the gear restrictions specified in § 648.85(b)(7)(iv)(E), and (b)(7)(v)(B) or (b)(7)(vi)(B), whichever is applicable.

(75) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the landing limits specified in § 648.85(b)(7)(iv)(H), and (b)(7)(v)(C) or (b)(7)(vi)(C), whichever is applicable.

(76) If fishing in the CA I Hook Gear Haddock SAP specified in § 648.85(b)(7), fail to comply with the reporting requirement specified in § 648.85(b)(7)(v)(D) or (b)(7)(vi)(D), whichever is applicable.

(77) Fish in the CA I Hook Gear Haddock Access Area specified in § 648.85(b)(7)(ii), if that area is closed as specified in § 648.85(b)(7)(iv)(I) or (b)(7)(vi)(F).

* * * * *

4. In § 648.85, the introductory paragraph (a) and paragraphs (b)(5)(ii), (b)(7)(i), (b)(7)(iii), (b)(7)(iv), (b)(7)(v), (b)(8)(v)(A)(*2*), (b)(8)(v)(A)(*3*), (b)(8)(v)(B), (b)(8)(v)(C), (b)(8)(v)(E), (b)(8)(v)(H), and (b)(8)(v)(L) are revised, and paragraph (b)(7)(vi) is added to read as follows:

§ 648.85 Special management programs.

(a) *U.S./Canada Resource Sharing Understanding.* No NE multispecies fishing vessel, or person on such vessel, may enter, fish in, or be in the U.S./Canada Resource Sharing Understanding Management Areas (U.S./Canada Management Areas), as defined in paragraph (a)(1) of this section, unless the vessel is fishing in accordance with the restrictions and conditions of this section. These restrictions do not preclude fishing under an approved Special Access Program specified under paragraph (b) of this section.

* * * * *

(b) * * *

(5) * * *

(ii) *GB cod.* The incidental TAC for GB cod specified in this paragraph (b)(5), shall be subdivided as follows: 50 percent to the Regular B DAS Pilot Program, described in paragraph (b)(6) of this section; 16 percent to the CA I Hook Gear Haddock SAP, described in paragraph (b)(7) of this section; and 34 percent to the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8) of this section.

* * * * *

(7) * * *

(i) *Eligibility.* Vessels issued a valid limited access NE multispecies DAS permit are eligible to participate in the CA I Hook Gear Haddock SAP, and may fish in the CA I Hook Gear Haddock Access Area, as described in paragraph (b)(7)(ii) of this section, for the season specified in paragraph (b)(7)(iii) of this section, provided such vessels comply with the requirements of this section, and provided the SAP is not closed according to the provisions specified under paragraphs (b)(7)(iv)(I) or (b)(7)(vi)(F) of this section. Copies of a chart depicting this area are available from the Regional Administrator upon request.

* * * * *

(iii) *Season.* The overall season for the CA I Hook Gear Haddock SAP is October 1 through December 31, which is divided into two participation periods, one for Sector and one for non-Sector vessels. For the 2005 fishing year, the only participation period in which eligible Sector vessels may fish in the CA I Hook Gear Haddock SAP is from October 1 through November 15. For the 2005 fishing year, the only participation period in which eligible non-Sector vessels may fish in the SAP is from November 16 through December 31. For the 2006 fishing year and beyond, these participation periods shall alternate between Sector and non-Sector vessels such that, in fishing year 2006, the participation period for non-Sector vessels is October 1 through November 15 and the participation period for Sector vessels is November 16 through December 31. The Regional Administrator may adjust the start date

of the second participation period prior to November 16 if the haddock TAC for the first participation period specified in paragraph (b)(7)(iv)(G) of this section is harvested prior to November 15.

(iv) *General program restrictions.* General program restrictions specified in this paragraph (b)(7)(iv) apply to all eligible vessels as specified in paragraph (b)(7)(i) of this section. Further program restrictions specific to Sector and non-Sector vessels are specified in paragraphs (b)(7)(iii), (v), and (vi) of this section.

(A) *DAS use restrictions.* A vessel fishing in the CA I Hook Gear Haddock SAP may not initiate a DAS flip. A vessel is prohibited from fishing in the CA I Hook Gear Haddock SAP while making a trip under the Regular B DAS Pilot Program described under paragraph (b)(6) of this section.

(B) *VMS requirement.* An eligible NE multispecies DAS vessel fishing in the CA I Hook Gear Haddock SAP specified in this paragraph (b)(7) must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* To be eligible to participate in the CA I Hook Gear Haddock SAP, a vessel must notify the NMFS Observer Program by September 1 of its intent to participate in that year. This notification need not include specific information about the date of the trip. For the purposes of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the CA I Hook Gear Haddock SAP, as required in paragraph (b)(7)(iv)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

(D) *VMS declaration.* Prior to departure from port, a vessel intending to participate in the CA I Hook Gear Haddock SAP must declare into the SAP via VMS, and indicate the type of DAS that it intends to fish. A vessel declared into the CA I Hook Gear Haddock SAP may catch fish only on a declared trip in the CA I Hook Gear Haddock Special Access Area described under paragraph (b)(7)(ii) of this section.

(E) *Gear restrictions.* A vessel declared into and fishing in the CA I Hook Gear Haddock SAP may fish with and possess on board demersal longline gear or tub trawl gear only, unless further restricted as specified under paragraph (b)(7)(v)(A) of this section.

(F) *Haddock TAC.* The maximum total amount of haddock that may be caught (landings and discards) in the CA I Hook Gear Haddock SAP Area in any fishing year is 1,000 mt. The maximum amount of haddock that may be caught is divided between the two participation periods as follows: 500 mt for the October 1 - November 15 participation period, and 500 mt for the November 16 - December 31 participation period, as specified in paragraph (b)(7)(iii) of this section. The Regional Administrator may adjust the 500–mt quota for the second participation period to account for under- or over-harvest of the 500–mt haddock quota (landings and discards) that occurred in the first participation period, not to exceed the overall haddock TAC specified in this paragraph (b)(7)(iv)(F).

(G) *Trip restrictions.* A vessel is prohibited from deploying fishing gear or catching fish outside of the CA I Hook Gear Haddock SAP Area on the same fishing trip on which it is declared into the CA I Hook Gear Haddock SAP.

(H) *Landing limits.* For all eligible vessels declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section, landing limits for NE multispecies other than cod, which are specified at paragraphs (b)(7)(v)(C) and (b)(7)(vi)(C) of this section, are as specified at § 648.86.

(I) *Mandatory closure of CA I Hook Gear Haddock Access Area.* When the Regional Administrator projects that the haddock TAC specified in paragraph (b)(7)(iv)(G) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock SAP Area to all eligible vessels as specified in paragraph (b)(7)(ii) of this section.

(v) *Sector vessel program restrictions.* In addition to the general program restrictions specified at paragraph (b)(7)(iv) of this section, the restrictions specified in this paragraph (b)(7)(v) apply only to Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Category A, Regular B, or Reserve B DAS, in accordance with § 648.82(d).

(B) *Gear restrictions.* A vessel enrolled in the Sector is subject to the gear requirements of the Sector Operations Plan as approved under § 648.87(d).

(C) *Landing limits.* A Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section is subject to the cod landing limit in effect under the Sector's Operations Plan as approved under § 648.87(d).

(D) *Reporting requirements.* The owner or operator of a Sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports to the Sector Manager, with instructions to be provided by the Sector Manager, for each day fished in the CA I Hook Gear Haddock SAP Area. The Sector Manager will provide daily reports to NMFS, including at least the following information: Total weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(E) *GB cod incidental catch TAC.* There is no GB cod incidental catch TAC specified for Sector vessels declared into the CA I Hook Gear Haddock SAP. All cod caught by Sector vessels fishing in the SAP count toward the Sector's annual GB cod TAC, specified in § 648.87(d)(1)(iii).

(vi) *Non-Sector vessel program restrictions.* In addition to the general program restrictions specified at paragraph (b)(7(iv) of this section, the restrictions specified in this paragraph (b)(7)(vi) apply only to non-Sector vessels declared into the CA I Hook Gear Haddock SAP.

(A) *DAS use restrictions.* Non-Sector vessels fishing in the CA I Hook Gear Haddock SAP may use Regular B or Reserve B DAS, in accordance with § 648.82(d)(2)(i)(A) and (d)(2)(ii)(A). A non-Sector vessel is prohibited from using A DAS when declared into the SAP.

(B) *Gear restrictions.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP is exempt from the maximum number of hooks restriction specified in § 648.80(a)(4)(v).

(C) *Landing limits.* A non-Sector vessel declared into the CA I Hook Gear Haddock SAP described in paragraph (b)(7)(i) of this section may not land, fish for, or possess on board more than 1,000 lb (453.6 kg) of cod per trip. A non-Sector vessel is not permitted to discard legal-sized cod prior to reaching the landing limit, and is required to end its trip if the cod trip limit is achieved or exceeded.

(D) *Reporting requirements.* The owner or operator of a non-Sector vessel declared into the CA I Hook Gear Haddock SAP must submit reports via VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished in the CA I Hook Gear Haddock SAP Area. The reports must be submitted in 24–hr intervals for each day, beginning at 0000 hr and ending at 2400 hr. The reports must be submitted by 0900 hr of the following day. The reports must include at least the following information: Total

weight (lb/kg) of cod and haddock kept, and total weight (lb/kg) of cod and haddock discarded.

(E) *GB cod incidental catch TAC.* The maximum amount of GB cod (landings and discards) that may be cumulatively caught by non-Sector vessels from the CA I Hook Gear Haddock Access Area in a fishing year is the amount specified under paragraph (b)(5)(ii) of this section.

(F) *Mandatory closure of CA I Hook Gear Haddock Access Area due to catch of GB cod incidental catch TAC.* When the Regional Administrator projects that the GB cod incidental catch TAC specified in paragraph (b)(7)(vi)(F) of this section has been caught, NMFS shall close, through rulemaking consistent with the Administrative Procedure Act, the CA I Hook Gear Haddock Access Area to all non-Sector fishing vessels.

* * * * *

(8) * * *

(v) * * *

(A) * * *

(*2*) A vessel that is declared into the Eastern U.S./Canada Haddock SAP Pilot Program, described in paragraph (b)(8)(ii) of this section, may catch fish, on the same trip, in the Eastern U.S./Canada Haddock SAP Area and in the CA II Yellowtail Flounder Access Area, described in paragraph (b)(3)(ii) of this section, under either a Category A DAS or a Category B DAS.

(*3*) A vessel may choose, on the same trip, to catch fish in either/both the Eastern U.S./Canada Haddock SAP Program and the CA II Yellowtail Flounder Access Area, and in that portion of the Eastern U.S./Canada Area described in paragraph (a)(1)(ii) of this section that lies outside of these two SAPs, provided the vessel fishes under a Category A DAS and abides by the VMS restrictions of paragraph (b)(8)(v)(D) of this section.

* * * * *

(B) *VMS requirement.* A NE multispecies DAS vessel fishing in the Eastern U.S./Canada Haddock SAP Program specified under paragraph (b)(8)(ii) of this section, must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10.

(C) *Observer notifications.* For the purpose of selecting vessels for observer deployment, a vessel must provide notice to NMFS of the vessel name; contact name for coordination of observer deployment; telephone number for contact; areas to be fished; and date, time, and port of departure at least 72 hours prior to the beginning of any trip that it declares into the Eastern U.S./Canada Haddock SAP Program specified in paragraph (b)(8)(ii) of this section, as required under paragraph (b)(8)(v)(D) of this section, and in accordance with instructions provided by the Regional Administrator.

* * * * *

(E) *Gear restrictions.* A NE multispecies vessel fishing in the Eastern U.S./Canada Haddock SAP Pilot Program must use one of the haddock separator trawl nets authorized for the Eastern U.S./Canada Area, as specified in paragraph (a)(3)(iii)(A) of this section. No other type of fishing gear may be on the vessel when participating on a trip in the Eastern U.S./Canada Haddock SAP Program, with the exception of a flounder net as described in paragraph (a)(3)(iii) of this section, provided the flounder net is stowed in accordance with § 648.23(b).

* * * * *

(H) *Incidental cod TAC.* The maximum amount of GB cod (landings and discards) that may be caught when fishing in the Eastern U.S./Canada Haddock SAP Program in a fishing year, by vessels fishing under a Category B DAS, as authorized in paragraph (b)(8)(v)(A) of this section, is the amount specified in paragraph (b)(5)(i)(B) of this section.

* * * * *

(L) *General closure of the Eastern U.S./Canada Haddock SAP Area.* The Regional Administrator, based upon information required under § 648.7, 648.9, 648.10, or 648.85, and any other relevant information may, through rulemaking consistent with the Administrative Procedure Act, close the Eastern U.S./Canada Haddock SAP Pilot Program for the duration of the season, if it is determined that continuation of the Eastern U.S./Canada Haddock SAP Pilot Program would undermine the achievement of the objectives of the FMP or the Eastern U.S./Canada Haddock SAP Pilot Program.

* * * * *

[FR Doc. 05–14091 Filed 7–15–05; 8:45 am]

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Notices

Federal Register
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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

Food and Nutrition Service

Child and Adult Care Food Program: National Average Payment Rates, Day Care Home Food Service Payment Rates, and Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes for the Period July 1, 2005–June 30, 2006

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the annual adjustments to the national average payment rates for meals and supplements served in child care centers, outside-school-hours care centers, at-risk afterschool care centers, and adult day care centers; the food service payment rates for meals and supplements served in day care homes; and the administrative reimbursement rates for sponsoring organizations of day care homes, to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are made on an annual basis each July, as required by the statutes and regulations governing the Child and Adult Care Food Program (CACFP).

DATES: These rates are effective from July 1, 2005 through June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Keith Churchill, Section Chief, Child and Adult Care and Summer Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, Alexandria, Virginia 22302 (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Definitions

The terms used in this notice shall have the meanings ascribed to them in the regulations governing the CACFP (7 CFR part 226).

Background

Pursuant to sections 4, 11 and 17 of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1753, 1759a, and 1766), section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773) and 7 CFR 226.4, 226.12, and 226.13 of the regulations governing the CACFP, notice is hereby given of the new payment rates for institutions participating in CACFP. These rates shall be in effect during the period July 1, 2005 through June 30, 2006.

As provided for under the NSLA and the CNA, all rates in the CACFP must be revised annually on July 1 to reflect changes in the Consumer Price Index (CPI) for the most recent 12-month period. In accordance with this mandate, the Department last published the adjusted national average payment rates for centers, the food service payment rates for day care homes, and the administrative reimbursement rates for sponsors of day care homes on July 15, 2004, at 69 FR 42414 (for the period July 1, 2004–June 30, 2005).

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per meal rates in whole or fractions of U.S. dollars, effective from July 1, 2005–June 30, 2006]

Centers	Breakfast	Lunch and supper [1]	Supplement
Contiguous States:			
Paid	0.23	0.22	0.05
Reduced Price	0.97	1.92	0.31
Free	1.27	2.32	0.63
Alaska:			
Paid	0.34	0.36	0.09
Reduced Price	1.72	3.36	0.51
Free	2.02	3.76	1.03
Hawaii:			
Paid	0.26	0.26	0.06
Reduced Price	1.18	2.32	0.37
Free	1.48	2.72	0.74

	Breakfast		Lunch and supper		Supplement	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
Day care homes:						
Contiguous States	1.06	0.39	1.96	1.18	0.58	0.16
Alaska	1.68	0.60	3.17	1.91	0.94	0.26
Hawaii	1.23	0.45	2.29	1.38	0.68	0.18

	Initial 50	Next 150	Next 800	Each additional
Administrative Reimbursement Rates for Sponsoring Organizations of Day Care Homes per Home/per Month Rates in U.S. Dollars:				
Contiguous States	91	69	54	48

	Initial 50	Next 150	Next 800	Each additional
Alaska	147	112	88	77
Hawaii	106	81	63	56

[1]These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to participants under the program. A notice announcing the value of commodities and cash-in-lieu of commodities is published separately in the **Federal Register**.

The changes in the national average payment rates for centers reflect a 3.16 percent increase during the 12-month period, May 2004 to May 2005 (from 186.7 in May 2004 to 192.6 in May 2005), in the food away from home series of the CPI for All Urban Consumers.

The changes in the food service payment rates for day care homes reflect a 1.98 percent increase during the 12-month period, May 2004 to May 2005 (from 186.6 in May 2004 to190.3 in May 2005), in the food at home series of the CPI for All Urban Consumers.

The changes in the administrative reimbursement rates for sponsoring organizations of day care homes reflect a 2.80 percent increase during the 12-month period, May 2004 to May 2005 (from 189.1 in May 2004 to 194.4 in May 2005), in the series for all items of the CPI for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the program is based on the rates contained in this notice.

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.558 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3518).

Authority: Sections 4(b)(2), 11a, 17(c) and 17(f)(3)(B) of the Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1753(b)(2), 1759a, 1766(f)(3)(B)) and section 4(b)(1)(B) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1773(b)(1)(B)).

Dated: July 12, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–14029 Filed 7–15–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

National School Lunch, Special Milk, and School Breakfast Programs; National Average Payments/Maximum Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the annual adjustments to the ''national average payments,'' the amount of money the Federal Government provides States for lunches, afterschool snacks and breakfasts served to children participating in the National School Lunch and School Breakfast Programs; to the ''maximum reimbursement rates,'' the maximum per lunch rate from Federal funds that a State can provide a school food authority for lunches served to children participating in the National School Lunch Program; and to the rate of reimbursement for a halfπpint of milk served to nonneedy children in a school or institution which participates in the Special Milk Program for Children. The payments and rates are prescribed on an annual basis each July. The annual payments and rates adjustments for the National School Lunch and School Breakfast Programs reflect changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers. The annual rate adjustment for the Special Milk Program reflects changes in the Producer Price Index for Fluid Milk Products. These payments and rates are in effect from July 1, 2005 through June 30, 2006.

DATES: *Effective Date:* These rates are effective from July 1, 2005 through June 30, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Barrett, Acting Section Chief, School Programs Section, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, VA 22302 or phone (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Background

Special Milk Program for Children—Pursuant to section 3 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772), the Department announces the rate of reimbursement for a halfπpint of milk served to nonneedy children in a school or institution that participates in the Special Milk Program for Children. This rate is adjusted annually to reflect changes in the Producer Price Index for Fluid Milk Products, published by the Bureau of Labor Statistics of the Department of Labor.

For the period July 1, 2005 to June 30, 2006, the rate of reimbursement for a halfπpint of milk served to a nonneedy child in a school or institution which participates in the Special Milk Program is 15.5 cents. This reflects a decrease of 8.87 percent in the Producer Price Index for Fluid Milk Products from May 2004 to May 2005 (from a level of 185.9 in May 2004 to 169.4 in May 2005).

As a reminder, schools or institutions with pricing programs that elect to serve milk free to eligible children continue to receive the average cost of a halfπpint of milk (the total cost of all milk purchased during the claim period divided by the total number of purchased halfπpints) for each halfπpint served to an eligible child.

National School Lunch and School Breakfast Programs—Pursuant to sections 11 and 17A of the Richard B. Russell National School Lunch Act, (42 U.S.C. 1759a and 1766a), and section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773), the Department annually announces the adjustments to the National Average Payment Factors and to the maximum Federal reimbursement rates for lunches and afterschool snacks served to children participating in the National School Lunch Program and breakfasts served to children participating in the School Breakfast Program. Adjustments are prescribed each July 1, based on changes in the Food Away From Home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of

Labor. The changes in the national average payment rates for schools and residential child care institutions for the period July 1, 2005 through June 30, 2006 reflect a 3.16 percent increase in the Consumer Price Index for All Urban Consumers during the 12-month period May 2004 to May 2005 (from a level of 186.7 in May 2004 to 192.6 in May 2005). Adjustments to the national average payment rates for all lunches served under the National School Lunch Program, breakfasts served under the School Breakfast Program, and afterschool snacks served under the National School Lunch Program are rounded down to the nearest whole cent.

Lunch Payment Levels—Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753) provides general cash for food assistance payments to States to assist schools in purchasing food. The Richard B. Russell National School Lunch Act provides two different section 4 payment levels for lunches served under the National School Lunch Program. The lower payment level applies to lunches served by school food authorities in which less than 60 percent of the lunches served in the school lunch program during the second preceding school year were served free or at a reduced price. The higher payment level applies to lunches served by school food authorities in which 60 percent or more of the lunches served during the second preceding school year were served free or at a reduced price.

To supplement these section 4 payments, section 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1759(a)) provides special cash assistance payments to aid schools in providing free and reduced price lunches. The section 11 National Average Payment Factor for each reduced price lunch served is set at 40 cents less than the factor for each free lunch.

As authorized under sections 8 and 11 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1757 and 1759a), maximum reimbursement rates for each type of lunch are prescribed by the Department in this Notice. These maximum rates are to ensure equitable disbursement of Federal funds to school food authorities.

Afterschool Snack Payments in Afterschool Care Programs—Section 17A of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766a) establishes National Average Payments for free, reduced price and paid afterschool snacks as part of the National School Lunch Program.

Breakfast Payment Factors—Section 4 of the Child Nutrition Act of 1966 (42 U.S.C. 1773) establishes National Average Payment Factors for free, reduced price and paid breakfasts served under the School Breakfast Program and additional payments for free and reduced price breakfasts served in schools determined to be in ''severe need'' because they serve a high percentage of needy children.

Revised Payments

The following specific section 4, section 11 and section 17A National Average Payment Factors and maximum reimbursement rates for lunch, the afterschool snack rates, and the breakfast rates are in effect from July 1, 2005 through June 30, 2006. Due to a higher cost of living, the average payments and maximum reimbursements for Alaska and Hawaii are higher than those for all other States. The District of Columbia, Virgin Islands, Puerto Rico and Guam use the figures specified for the contiguous States.

National School Lunch Program Payments

Section 4 National Average Payment Factors—In school food authorities which served less than 60 percent free and reduced price lunches in School Year 2003–04, the payments for meals served are:

Contiguous States: Paid rate—22 cents, free and reduced price rate—22 cents, maximum rate—30 cents;

Alaska: Paid rate—36 cents, free and reduced price rate—36 cents, maximum rate—47 cents;

Hawaii: Paid rate—26 cents, free and reduced price rate—26 cents, maximum rate—34 cents.

In school food authorities which served 60 percent or more free and reduced price lunches in School Year 2003–04, payments are:

Contiguous States: Paid rate—24 cents, free and reduced price rate—24 cents, maximum rate—30 cents;

Alaska: Paid rate—38 cents, free and reduced price rate—38 cents, maximum rate—47 cents;

Hawaii: Paid rate—28 cents, free and reduced price rate—28 cents, maximum rate—34 cents.

Section 11 National Average Payment Factors:

Contiguous States: Free lunch—210 cents, reduced price lunch—170 cents;

Alaska: Free lunch—340 cents, reduced price lunch—300 cents;

Hawaii: Free lunch—246 cents, reduced price lunch—206 cents.

Afterschool Snacks in Afterschool Care Programs. The payments are:

Contiguous States: Free snack—63 cents, reduced price snack—31 cents, paid snack—05 cents;

Alaska: Free snack—103 cents, reduced price snack—51 cents, paid snack—09 cents;

Hawaii: Free snack—74 cents, reduced price snack—37 cents, paid snack—06 cents.

School Breakfast Program Payments

For schools ''not in severe need'' the payments are:

Contiguous States: Free breakfast—127 cents, reduced price breakfast—97 cents, paid breakfast—23 cents;

Alaska: Free breakfast—202 cents, reduced price breakfast—172 cents, paid breakfast—34 cents;

Hawaii: Free breakfast—148 cents, reduced price breakfast—118 cents, paid breakfast—26 cents.

For schools in ''severe need'' the payments are:

Contiguous States: Free breakfast—151 cents, reduced price breakfast—121 cents, paid breakfast—23 cents;

Alaska: Free breakfast—242 cents, reduced price breakfast—212 cents, paid breakfast—34 cents;

Hawaii: Free breakfast—176 cents, reduced price breakfast—146 cents, paid breakfast—26 cents.

Payment Chart

The following chart illustrates: the lunch National Average Payment Factors with the sections 4 and 11 already combined to indicate the per lunch amount; the maximum lunch reimbursement rates; the reimbursement rates for afterschool snacks served in afterschool care programs; the breakfast National Average Payment Factors including ''severe need'' schools; and the milk reimbursement rate. All amounts are expressed in dollars or fractions thereof. The payment factors and reimbursement rates used for the District of Columbia, Virgin Islands, Puerto Rico and Guam are those specified for the contiguous States.

BILLING CODE 3410–30–P

SCHOOL PROGRAMS
MEAL, SNACK AND MILK PAYMENTS TO STATES AND SCHOOL FOOD AUTHORITIES
Expressed in Dollars or Fractions Thereof
Effective from: July 1, 2005 - June 30, 2006

NATIONAL SCHOOL LUNCH PROGRAM*		LESS THAN 60%	60% OR MORE	MAXIMUM RATE
CONTIGUOUS STATES	PAID	0.22	0.24	0.30
	REDUCED PRICE	1.92	1.94	2.09
	FREE	2.32	2.34	2.49
ALASKA	PAID	0.36	0.38	0.47
	REDUCED PRICE	3.36	3.38	3.62
	FREE	3.76	3.78	4.02
HAWAII	PAID	0.26	0.28	0.34
	REDUCED PRICE	2.32	2.34	2.50
	FREE	2.72	2.74	2.90
SCHOOL BREAKFAST PROGRAM		NON-SEVERE NEED		SEVERE NEED
CONTIGUOUS STATES	PAID	0.23		0.23
	REDUCED PRICE	0.97		1.21
	FREE	1.27		1.51
ALASKA	PAID	0.34		0.34
	REDUCED PRICE	1.72		2.12
	FREE	2.02		2.42
HAWAII	PAID	0.26		0.26
	REDUCED PRICE	1.18		1.46
	FREE	1.48		1.76
SPECIAL MILK PROGRAM		ALL MILK	PAID MILK	FREE MILK
PRICING PROGRAMS WITHOUT FREE OPTION		0.155	N/A	N/A
PRICING PROGRAMS WITH FREE OPTION		N/A	0.155	Average Cost Per 1/2 Pint of Milk
NONPRICING PROGRAMS		0.155	N/A	N/A
AFTERSCHOOL SNACKS SERVED IN AFTERSCHOOL CARE PROGRAMS				
CONTIGUOUS STATES	PAID	0.05		
	REDUCED PRICE	0.31		
	FREE	0.63		
ALASKA	PAID	0.09		
	REDUCED PRICE	0.51		
	FREE	1.03		
HAWAII	PAID	0.06		
	REDUCED PRICE	0.37		
	FREE	0.74		

*Payment listed for Free and Reduced Price Lunches include both section 4 and section 11 funds

BILLING CODE 3410–30–C

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

National School Lunch, School Breakfast and Special Milk Programs are listed in the Catalog of Federal Domestic Assistance under No. 10.555, No. 10.553 and No. 10.556, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Authority: Sections 4, 8, 11 and 17A of the Richard B. Russell National School Lunch Act, as amended, (42 U.S.C. 1753, 1757, 1759a, 1766a) and sections 3 and 4(b) of the Child Nutrition Act, as amended, (42 U.S.C. 1772 and 42 U.S.C. 1773(b)).

Dated: July 12, 2005.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 05–14028 Filed 7–15–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2005 Through June 30, 2006

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2006 (July 1, 2005 through June 30, 2006) for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP). It also announces the national average value of donated foods to be provided in school year 2006 for each lunch served by commodity only schools.

DATES: *Effective date:* July 1, 2005.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2005 Through June 30, 2006

This notice implements mandatory provisions of sections 6(c), 14(f) and 17(h)(1)(B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c), 1762a(f), and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments on July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under CACFP (7 CFR part 226) shall be 17.50 cents for the period July 1, 2005 through June 30, 2006.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 1.3 percent from 152.98 for March, April and May of 2004 to 155.03 for the same three months in 2005. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2005 through June 30, 2006 will be 17.50 cents per meal. This is an increase of 0.25 cents from the school year 2005 (July 1, 2004 through June 30, 2005) rate.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(c) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such donated foods.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as ''schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs.'' For school year 2006, commodity only schools shall be eligible to receive donated food assistance valued at 39.50 cents for each free, reduced price, and paid lunch served. This amount is based on the sum of the section 6(c) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 2006. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in NSLP.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), 14(f) and 17(h)(1)(B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and 6(e)(1), 1762a(f), and 1766(h)(1)(B)).

Dated: July 8, 2005.

Roberto Salazar,

Administrator.

[FR Doc. 05–14027 Filed 7–15–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on July 21 at 6:30 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: July 21, 2005.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Federal Official (DFO), District Ranger, Plains Ranger District, Lolo National Forest at (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include reviewing the status of selected projects, initiating responses for proposed RAC projects for 2006, and receiving public comment. The deadline for proposed RAC projects for 2006 will be August 15, 2005. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, Sanders County Ledger, Daily Interlake, Missoulian, and River Journal.

Dated: June 24, 2005.

Randy Hojem,

DFO, Plains Ranger District, Lolo National Forest.

[FR Doc. 05–14012 Filed 7–15–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Colville Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Colville Resource Advisory Committee will meet on Wednesday, July 27, 2005, at the Spokane Community College, Colville Campus, 985 South Elm Street, Colville, Washington 99114. The meeting will begin at 9 a.m. and conclude at 4 p.m. Agenda items include: (1) welcome, (2) review and approve meeting notes from June 30, 2005, meeting, (3) Fiscal Year 2006 Title II projects review and recommendation to the forest designated Federal official for Pend Oreille County applications; and (4) Public Forum.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Craig Newman, Acting Forest Supervisor or to Diana Baxter, Public Affairs Officer, Colville National Forest, 765 S. Main, Colville, Washington 99114, (509) 684–7000.

Dated: July 11, 2005.

Craig Newman,

Acting Forest Supervisor—Colville N.F.

[FR Doc. 05–14065 Filed 7–15–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1401]

Expansion of Foreign-Trade Zone 26; Atlanta, GA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 26, submitted an application to the Board for authority to expand FTZ 26 to include seven sites (Sites 4–10) within the Muscogee Technology Park and at the Corporate Ridge/Columbus East Industrial Park in Columbus; within the Green Valley Industrial Park, at the Hudson Industrial Park and at the I–75 Industrial Park in Griffin; at the Hamilton Mill Business Center in Buford; and, at the ProLogis Park Greenwood in McDonough, Georgia, within and adjacent to the Atlanta Customs port of entry (FTZ Docket 44–2004; Filed 9/22/04);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 58127, 9/29/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 26 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 8th day of July, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 05–14075 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1400

Approval for Expansion of Subzone 87B, CITGO Petroleum Corporation (Oil Refinery), Lake Charles, Louisiana

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Lake Charles Harbor and Terminal District, grantee of FTZ 87, has requested authority on behalf of CITGO Petroleum Corporation (CITGO), to amend the boundaries of Subzone 87B, add a site and expand the scope of authority under zone procedures within the CITGO refinery in Lake Charles, Louisiana (FTZ Docket 35–2004, filed 8/18/2004);

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 52856–52857, 8/30/2004);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby orders:

The application to amend the boundaries, add a site (Site 6) and expand the scope of manufacturing authority under zone procedures within Subzone 87B, is approved, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR § 146.41, 146.42) products consumed as fuel for the petrochemical complex shall be subject to the applicable duty rate.
2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non–privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

-petrochemical feedstocks (examiners report, Appendix ''C'');

-products for export;
-and, products eligible for entry under HTSUS # 9808.00.30 and# 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 8th day of July, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–14076 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1392]

Grant of Authority, Establishment of a Foreign–Trade Zone, Washington County, Ohio

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''. . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Southeastern Ohio Port Authority, an Ohio public corporation (the Grantee), has made application to the Board (FTZ Docket 60–2004, filed 12/17/04), requesting the establishment of a foreign–trade zone at sites in Washington County, Ohio, adjacent to the Charleston, West Virginia, Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 77985, 12/29/04); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign–trade zone, designated on the records of the Board as Foreign–Trade Zone No. 264, at the sites described in the application, and subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 24th day of June, 2005.

Foreign–Trade Zones Board

Carlos M. Gutierrez,

Secretary of Commerce Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–14073 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1399]

Grant of Authority for Subzone Status, TPI Petroleum, Inc., (Oil Refinery Complex), Ardmore, Oklahoma, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign–Trade Zones Act provides for ''. . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, Rural Enterprises of Oklahoma, Inc., grantee of Foreign–Trade Zone 227, has made application to the Board for authority to establish special–purpose subzone status at the oil refinery complex of TPI Petroleum, Inc., located at three sites in the Ardmore, Oklahoma, area (FTZ Docket 28–2004, filed 07/13/04).

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 44490, 7/26/04); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby grants authority for subzone status for the oil refining operations of TPI Petroleum, Inc., located in the Ardmore, Oklahoma, area, (Subzone 227A), as described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign status (19 CFR §§ 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.
2. Privileged foreign status (19 CFR § 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non–privileged foreign (NPF) status (19 CFR § 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.10, #2709.00.20, #2710.11.25, #2710.11.45, #2710.19.05, #2710.19.10, #2710.19.45, #2710.91.00, #2710.99.05, #2710.99.10, #2710.99.16, #2710.99.21 and #2710.99.45 which are used in the production of:

-petrochemical feedstocks and refinery by–products (examiners report, Appendix ''C'');
-products for export;
-and, products eligible for entry under HTSUS # 9808.00.30 and# 9808.00.40 (U.S. Government purchases).

Signed at Washington, DC, this 1st day of July, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary of Commercefor Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–14074 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808, A–475–822, A 580–831, A–791–805, A–583–830, C–423–809, C–475–823, C–791–806]

Continuation of Antidumping Duty Orders on Certain Stainless Steel Plate in Coils From Belgium, Italy, South Korea, South Africa, and Taiwan, and the Countervailing Duty Orders on Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa

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

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'')

that revocation of the antidumping duty orders on certain stainless steel plate from Belgium, Italy, South Korea, South Africa, and Taiwan, and the countervailing duty orders on Belgium, Italy, and South Africa would likely lead to continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, the Department is publishing notice of continuation of these antidumping and countervailing duty orders.

EFFECTIVE DATE: July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Orders

The product covered by these orders is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.,* cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 11521 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these orders is dispositive.

This scope language reflects the March 11, 2003, amendment of the antidumping and countervailing duty orders and suspension of liquidation which the Department implemented in accordance with the Court of International Trade decision in *Allegheny Ludlum* v. *United States,* Slip Op. 02–147 (Dec. 12, 2002). *See also Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 11520 (March 11, 2003), and *Notice of Amended Coutervailing Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa,* 68 FR 11524 (March 11, 2003).

Background

On April 1, 2004, the Department initiated and the ITC instituted sunset reviews of the antidumping duty orders on certain stainless steel plate in coils from Belgium, Italy, South Korea, South Africa, and Taiwan, and the countervailing duty orders on certain stainless steel plate in coils from Belgium, Italy, and South Africa, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1]

As a result of its review, the Department found that revocation of the antidumping and countervailing duty orders would likely lead to continuation or recurrence of dumping and countervailable subsidies, and notified the ITC of the magnitude of the margins and the net countervailable subsidies likely to prevail were the orders to be revoked.[2] On July 5, 2005, the ITC determined pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on certain stainless steel plate in coils from Belgium, Italy, South Korea, South Africa, and Taiwan, and the countervailing duty orders on certain stainless steel plate in coils from Belgium, Italy, and South Africa would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Determination

As a result of the determinations by the Department and the ITC that revocation of these antidumping and countervailing duty orders would likely lead to continuation or recurrence of dumping and countervailable subsidies, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty orders on certain stainless steel plate in coils from Belgium, Italy, South Korea, South Africa, and Taiwan, and countervailing duty orders on certain stainless steel plate in coils from Belgium, Italy, and South Africa.

The Department will notify U.S. Customs and Border Protection (''CBP'') to continue to collect antidumping and countervailing duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of these orders will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of these orders not later than June 2010.

These five-year (sunset) reviews and notice are in accordance with sections 751(c) and 777(i)(1) of the Act.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3807 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 69 FR 17129 (April 1, 2004), and ITC *Investigation Nos. 701–TA–376, 377, & 379 and 731–TA–788–793 (Review)*, 70 FR 38710 (July 5, 2005).

[2] *See Stainless Steel Plate in Coils from Canada, South Africa, and Taiwan, Notice of Expedited Sunset Review: Final Results*, 69 FR 47416 (August 5, 2004), *Stainless Steel Plate in Coils from Belgium, Italy, and the Republic of Korea; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Orders*; 69 FR 61798 (October 21, 2004), *Stainless Steel Plate in Coils from Belgium; Final Results of Expedited Sunset Review of Countervailing Duty Order*, 69 FR 64277 (November 4, 2004), *Stainless Steel Plate in Coils from Italy, Final Result of Full Sunset Review of Countervailing Duty Order*, 70 FR 10357 (March 3, 2005), *Stainless Steel Plate in Coils from South Africa, Final Result of Expedited Sunset Review*, 69 FR 47418 (August 5, 2004).

[3] *See Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan*, 70 FR 38710 (July 5, 2005), and *USITC Publication 3784, Investigation Nos. 701–TA–376, 377, & 379 and 731–TA–788–793 (Review).*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Japan; Amended Final Results of Antidumping Duty Administrative Reviews Pursuant to Final Court Decision

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

SUMMARY: On April 8, 2005, in response to appeals in *NTN Corporation, NTN Bearing Corporation of America, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc., NTN Bower Corporation, and NTN–BCA Corporation v. United States and Timken U.S. Corporation (NTN v. United States)*, 125 Fed. Appx. 1011 (CAFC April 8, 2005), the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the Court of International Trade's (CIT's) decision of the Department of Commerce's (the Department's) final remand determination, Court No. 00–09–00443, Slip. Op. 04–64 (CIT June 9, 2004). This remand determination affects final assessment rates for the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan for the period of review May 1, 1998, through April 30, 1999. The merchandise covered by these reviews is ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Because there is now a final and conclusive court decision, we are amending our final results of reviews and we will instruct U.S. Customs and Border Protection to liquidate entries subject to these reviews.

EFFECTIVE DATE: July 18, 2005.

FOR FURTHER INFORMATION CONTACT: John Holman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3683 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 2000, the Department published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of Orders in Part*, 65 FR 49219 (August 11, 2000), (collectively *AFBs 10*), which covered the period of review (POR) May 1, 1998, through April 30, 1999. The classes or kinds of merchandise covered by these reviews are BBs, CRBs, and SPBs.

NTN Bearing Corporation of America, NTN Corporation, American NTN Bearing Manufacturing Corporation, NTN Driveshaft, Inc., and NTN–Bower Corporation (collectively NTN), and Timken U.S. Corporation (Timken) appealed the Department's decisions in *AFBs 10*. On February 3, 2004, the CIT issued its ruling in *NTN v. United States*, 306 F. Supp. 2d 1319, (CIT February 3, 2004), remanding to the Department the final results in *AFBs 10* as follows: (1) to apply the arm's–length test to the sales prices of certain affiliated resellers to determine whether the sales prices were comparable to the price at which NTN sold the subject merchandise to unaffiliated parties; (2) to explain how the record supports the Department's decision to recalculate NTN's home–market indirect selling expenses without regard to level of trade; (3) to clarify the reasoning for the Department's treatment of affiliated–party inputs, apply the major–input rule to NTN where appropriate, and open the record for additional information, if necessary. The remand affected NTN with respect to the administrative reviews of the antidumping duty orders on BBs, CRBs and SPBs from Japan for the period May 1, 1998, through April 30, 1999.

On April 28, 2004, the Department filed its final results of redetermination with the CIT. See *Final Remand Determination* in *NTN Corp., et al, v. United States*, (April 28, 2004) (Remand Results). In its redetermination, the Department conducted the arm's–length test for two of NTN's affiliated resellers and recalculated the antidumping duty margin applicable to NTN Corporation to account for the results of that test. As a result of the Department's redetermination and calculation changes, NTN's weighted–average margins for the POR changed to 4.71 percent for BBs, 3.50 percent for CRBS, and remained 2.78 percent for SPBs. On June 9, 2004, the CIT affirmed the Department's Remand Results in their entirety. See *NTN v. United States*, Court No. 00–09–00443, Slip. Op. 04–64 (CIT June 9, 2004).

NTN and Timken appealed the CIT's remand affirmation to the CAFC. On April 8, 2005, the CAFC affirmed the CIT's June 9, 2004, decision in *NTN v. United States*, 125 Fed. Appx. 1011 (CAFC April 8, 2005).

There is now a final and conclusive court decision with respect to the company affected by this litigation (NTN). Pursuant to section 516A(e) of the Tariff Act of 1930, as amended, we are amending our final results of review for this company and we will instruct U.S. Customs and Border Protection (CBP) to liquidate the relevant entries subject to these reviews in accordance with our remand results.

Assessment of Duties

We hereby amend the final results of the 1998–1999 administrative reviews of the antidumping duty orders on BBs, CRBs, and SPBs from Japan to reflect revised weighted–average margins for NTN. We determine that NTN's revised weighted–average margins are 4.71 percent for BBs, 3.50 percent for CRBs, and 2.78 percent for SPBs from Japan for the period May 1, 1998, through April 30, 1999.

Accordingly, the Department will determine and CBP will assess appropriate antidumping duties on entries of the subject merchandise produced or exported by the reviewed company. Individual differences between U.S. price and normal value may vary from the above percentages. The Department will issue assessment instructions to CBP within 15 days of publication of this notice.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: July 12, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3803 Filed 7–15–E5; 8:45 am]

(BILLING CODE: 3510–DS–S)

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review

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

SUMMARY: On May 13, 2005, the Department of Commerce (''Department'') published the notice of preliminary results of its changed circumstances review examining whether Shanxi Fengkun Foundry Ltd., Co. (''Fengkun Foundry''') is the successor–in-interest to Shanxi Fengkun Metallurgical Ltd., Co. (''Fengkun Metallurgical''') by virtue of its name change. *See Notice of Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review: Brake Rotors From the People's Republic of China*, 70 FR 25545 (May 13, 2005) (''*Preliminary Results*''). In those *Preliminary Results*, the Department found that Fengkun Foundry is not the successor–in-interest to Fengkun Metallurgical.

After consideration of new factual information solicited by the Department and comments from interested parties, the Department now finds that Fengkun Foundry is the successor–in-interest to Fengkun Metallurgical, and that Fengkun Foundry should retain the deposit rate assigned to Fengkun Metallurgical by the Department for all entries of the subject merchandise produced or exported by Fengkun Metallurgical. We have now completed this changed circumstances review in accordance with 19 CFR 351.216 and 351.221(c)(3).

EFFECTIVE DATE: July 18, 2005

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Carrie Blozy, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–5403, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 2004, the Department initiated a changed circumstances review of Fengkun Foundry's claim that it is the successor–of-interest to Fengkun Metallurgical. *See Brake Rotors from the People's Republic of China: Notice of Initiation of Changed Circumstances Review*, 69 FR 61468 (October 19, 2004) (''*Initiation Notice*''). On May 13, 2005, the Department published the preliminary results of its changed circumstances review. *See Preliminary Results*. In the *Preliminary Results* the Department stated that should Fengkun Foundry obtain a valid Certificate of Approval for Enterprises with Foreign Trade Rights (''Certificate of Approval'') and otherwise demonstrate that it is both an exporter and producer of the subject merchandise, we may revisit the issue and review the totality of information to determine if Fengkun Foundry should receive the same antidumping duty treatment with respect to brake rotors as the former Fengkun Metallurgical. *See Preliminary Results* at 25546. On May 31, 2005, Fengkun Foundry submitted a Certificate of Approval. On June 3, 2005, respondent submitted a case brief. Also, on June 3, 2005, petitioner, the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers, filed a case brief and comments on the Certificate of Approval submitted by respondent on May 31, 2005. On June 10, 2005, both respondent and petitioner submitted a rebuttal brief.

Scope of the Order

The products covered by the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all–terrain vehicles, vans, recreational vehicles under ''one ton and a half,'' and light trucks designated as ''one ton and a half.''

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi–finished rotors are those rotors which have undergone some drilling and on which the surface is not entirely smooth. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles and do not contain in the casting a logo of an original equipment manufacturer (''OEM'') which produces vehicles sold in the United States (*e.g.*, General Motors, Ford, Chrysler, Honda, Toyota, and Volvo). Brake rotors covered in this review are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron which contain a steel plate but otherwise meet the above criteria. Excluded from the scope of the order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Susan H. Kuhbach, Acting Deputy Assistant Secretary, AD/CVD Operations, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/frnhome.htm*. The paper copy and electronic version of the Decision Memorandum are identical in content.

Successorship and Final Results

On the basis of the record developed in this proceeding, we determine Fengkun Foundry is the successor–in-interest to Fengkun Metallurgical for purposes of determining antidumping duty liability. For a complete discussion of the basis for this decision, please see the Decision Memorandum accompanying this notice.

Effective as of the date of these final results, we will instruct U.S. Customs and Border Protection (''CBP'') to assign Fengkun Foundry the same antidumping duty cash–deposit rate applicable to Fengkun Metallurgical. The cash–deposit requirement will be effective upon publication of this notice of final results of changed circumstances review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date.

This notice also serves as a final reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.221(c)(3) and 19 CFR 351.216.

Dated: July 11, 2005.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

APPENDIX I

Comment 1: Whether Fengkun Foundry is the successor–in-interest to Fengkun Metallurgical

Comment 2: Circumvention of the Antidumping Order

Comment 3: Separate Rates

[FR Doc. E5–3802 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Final Results of Antidumping Duty Administrative Review and Final Determination Not to Revoke Order in Part

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

SUMMARY: On May 10, 2005, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line, and pressure pipe (seamless pipe) from Romania. The period of review is August 1, 2003, through July 31, 2004. We did not receive comments from interested parties, and we did not make any changes to the margin for the final results. The final margin for S.C. Silcotub S.A. is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Janis Kalnins at (202) 482–1392 or John Holman at (202) 482–3683, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 10, 2005, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on seamless pipe from Romania. See *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe from Romania: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke in Part*, 70 FR 24520 (May 10, 2005) (*Preliminary Results*). We invited interested parties to comment on the preliminary results. We did not receive comments from interested parties, and we did not make any changes to the margin for the final results. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–335, ASTM A–589, ASTM A–795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the order also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the order are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall–thickness, manufacturing process (hot finished or cold–drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the order are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

For a further and more specific description of the scope of the order, please see *Preliminary Results*, 70 FR at 24521.

Although the HTSUS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, our written description of the merchandise subject to the scope of this order is dispositive.

Facts Available

For these final results, the Department continues to find that S.C. Silcotub S.A. did not act to the best of its ability by withdrawing itself from the review, thus withholding information necessary to calculate an accurate dumping margin and which the Department requested. Accordingly, the Department continues to find that the use of adverse facts available is warranted under section 776 of the Act. For a detailed discussion of our application, selection, and corroboration of the rate we selected as adverse facts available, see *Preliminary Results*, 70 FR at 24522, 24523.

No Revocation in Part

On August 31, 2004, Silcotub submitted a request that the Department revoke the order in part on seamless pipe from Romania with respect to its sales. In the *Preliminary Results* we determined that S.C. Silcotub S.A. did not meet the requirement of selling the subject merchandise at not less than normal value for a period of three consecutive years. See *Preliminary Results*, 70 FR at 24523. Therefore, for these final results, we determine not to revoke the order with respect to sales of seamless pipe made by S.C. Silcotub S.A. to the United States.

Final Results of Review

As a result of our review, we determine that a weighted–average dumping margin of 15.15 percent exists for S.C. Silcotub S.A. for the period August 1, 2003, through July 31, 2004.

Duty Assessment and Cash–Deposit Requirements

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. Because we are applying adverse facts available to all exports of subject merchandise produced or exported by S.C. Silcotub S.A., we will instruct CBP to assess the final percentage margin against the entered customs values on all applicable entries during the period of review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

The following deposit requirements will be effective upon publication of these final results of this administrative review for all shipments of seamless pipe from Romania entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) The cash–deposit rate for S.C. Silcotub S.A. is 15.15 percent; (2) for merchandise exported by producers or exporters that were previously reviewed or investigated, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the producer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review,

the cash–deposit rate shall be 13.06 percent, the all–others rate established in the prior administrative review. See *Notice of Final Results of Antidumping Duty Administrative Review and Final Determination Not To Revoke Order in Part: Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe From Romania*, 70 FR 7237 (February 11, 2005). These cash–deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 12, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3804 Filed 7–15–E5; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–830]

Revocation of Antidumping Duty Order; Certain Stainless Steel Plate in Coils From Canada

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

SUMMARY: On May 21, 1999, the Department of Commerce (''the Department'') published an antidumping duty order on certain stainless steel plate in coils from Canada. *See Antidumping Duty Order, Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, Republic of Korea, South Africa, and Taiwan,* 64 FR 27756 (May 21, 1999). On April 1, 2004, the Department initiated its first sunset review of the order on certain stainless steel plate in coils from Canada. *See Initiation of Five-Year (''Sunset'') Reviews,* 69 FR 17129 (April 1, 2004).

(''*First Sunset Review*''). Pursuant to section 751(c) of the Tariff Act from 1930, as amended (''the Act''), the International Trade Commission (''the ITC'') determined that revocation of the antidumping duty order on certain stainless steel plate in coils from Canada is not likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan,* 70 FR 38710 (July 5, 2005). Therefore, pursuant to section 751(d)(2) of the Act, and section 351.222(i)(1)(iii) of the Department's regulations, the Department is revoking the antidumping duty order on certain stainless steel plate in coils from Canada.

DATES: *Effective Date:* May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of the order are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 11521 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to this order is dispositive.

This scope language reflects the March 11, 2003, amendment of the antidumping and countervailing duty orders and suspension of liquidation which the Department implemented in accordance with the Court of International Trade, decision in *Allegheny Ludlum* v. *United States,* 2002 Ct. Int. Trade LEXIS 147 (December 12, 2002). *See also Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan,* 68 FR 11520 (March 11, 2003) and *Notice of Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Italy, and South Africa,* 68 FR 11524 (March 11, 2003).

Background

On April 1, 2004, the Department initiated, and the ITC instituted, a sunset review of the antidumping duty order on certain stainless steel plate in coils from Canada. *See Initiation of Five-Year (''Sunset'') Reviews,* 69 FR 17129 (April 1, 2004), and *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan; Initiation of Five-Year Review,* 69 FR 17235 (April 1, 2004). As a result of the review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margin likely to prevail were the order to be revoked. *See Stainless Steel Plate in Coils from Canada, South Africa, and Taiwan; Notice of Expedited Sunset Review: Final Results,* 69 FR 47416 (August 5, 2004).

On July 5, 2005, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on certain stainless steel plate in coils from Canada 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. *See USITC Publication 3784, Investigation Nos. 701–TA–376, 377, & 379 and 731–TA 788–793 (Review)* (June 2005), and *Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan;* 70 FR 38710 (July 5, 2005).

Determination

As a result of the determination by the ITC that revocation of this antidumping duty order is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department pursuant to section 751(d) of the Act, is revoking the antidumping duty order on certain stainless steel plate in coils from Canada. Pursuant to section 751(d)(2) and 19 CFR 351.222(i)(2)(i), the effective date of revocation is May 21, 2004 (*i.e.,* the fifth anniversary of the date of publication in the **Federal Register** of the order).

The Department will notify the U.S. Customs and Border Protection (''CBP'') to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after May 21, 2004, the effective date of revocation of this order. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

This five-year sunset review and notice are in accordance with sections 751(d)(2) and 777(i)(1) of the Act.

Dated: July 12, 2005.

Susan H. Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–3806 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–449–804]

Steel Concrete Reinforcing Bars from Latvia: Extension of the Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Shane Subler at (202) 482–1376 or (202) 482–0189, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order/finding for which a review is requested, and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for (1) the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested, and (2) the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On September 27, 2004, Joint Stock Company Liepajas Metalurgs, a Latvian producer of subject merchandise, requested an administrative review of the antidumping duty order on steel concrete reinforcing bars from Latvia. On September 30, 2004, the petitioners in the proceeding, the Rebar Trade Action Coalition [1] and its individual members, also requested an administrative review of the antidumping order. On October 22, 2004, the Department published a notice of initiation of the administrative review, covering the period September 1, 2003, through August 31, 2004 (69 FR 62022). On April 26, 2005, the Department published an extension of the time limit for issuing the preliminary results of the administrative review. The preliminary results are currently due no later than August 1, 2005.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limits. Several complex issues related to merchandise classification and cost of production have been raised during the course of this administrative review. The Department needs more time to address these items and evaluate the issues more thoroughly.

Therefore, we are extending the time limit for completion of the preliminary results until no later than September 30, 2005. We intend to issue the final results no later than 120 days after publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

Dated: July 12, 2005.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–3805 Filed 07–15–E5; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Rebar Trade Action Coalition comprises Gerdau Ameristeel, CMC Steel Group, Nucor Corporation, and TAMCO.

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Promotion Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

DATE: August 1, 2005.

TIME: 9 a.m.–11 a.m.

PLACE: Grand Californian Hotel, Sorrel Room, 1600 South Disneyland Drive, Anaheim, CA 92802. Tel: 714.635.2300.

SUMMARY: The United States Travel and Tourism Promotion Advisory Board (Board) will hold a Board meeting on August 1, 2005 in the Sorrel Room at the Grand Californian Hotel, 1600 South Disneyland Drive, Anaheim, California 92802.

The Board will discuss the results of the international advertising and

promotion campaign launched in the United Kingdom in 2004/2005, which sought to encourage individuals to travel to the United States for the express purpose of engaging in tourism. The meeting will be open to the public. Time will be permitted for public comment. To sign up for public comment, please contact Julie Heizer at least 24 hours before the start of the meeting.

Julie Heizer may be contacted at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 1003, Washington, DC 20230; via fax at (202) 482–2887; or, via e-mail at *promotion@tinet.ita.doc.gov*.

Written comments concerning Board affairs are welcome anytime before or after the meeting. Written comments should be directed to Julie Heizer. Minutes will be available within 60 days of this meeting.

The Board is mandated by Public Law 108–7, Section 210. As directed by Public Law 108–7, Section 210, the Secretary of Commerce shall design, develop and implement an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States. The Board shall recommend to the Secretary of Commerce the appropriate coordinated activities for funding. This campaign shall be a multi-media effort that seeks to leverage the Federal dollars with contributions of cash and in-kind products unique to the travel and tourism industry. The Board was chartered in August of 2003 and will expire on August 8, 2005.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OTTI.

Dated: July 13, 2005.

Julie P. Heizer,

Deputy Director, Industry Relations, Office of Travel and Tourism Industries.

[FR Doc. E5–3809 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071105C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice; committee meetings.

SUMMARY: The New England Fishery Management Council's (Council) Scallop Committee and Advisory Panel will hold meetings to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meetings will be held on August 2–3, 2005. See **SUPPLEMENTARY INFORMATION** for meeting agendas.

ADDRESSES: The meetings will be held at the Hilton Garden Inn, One Thurber Street, Warwick, RI 02886; telephone: (401) 734–9600 .

Council address: New England Fishery Management Council, 50 Water Street, Mill #2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee's schedule and agenda for the following two meetings are as follows:

Tuesday, August 2, 2005 – 8:30 a.m.

The Scallop Advisory Panel will develop recommendations for and/or review alternatives in Framework 18 including: Measures to address issues with Elephant Trunk Area fishing activities; A Notice Action program to adjust Elephant Trunk Area and open area allocations for 2007; Trip exchange and other measures to increase flexibility for vessels to determine where to fish, focusing on 2006; Measures to liberalize the broken trip exemption program and the trip exchange deadline; Input controls for the general category fishery; Measures to improve the research scallop set-aside program; Other Framework 18 issues as delegated by the July 19 Oversight Committee meeting.

Wednesday August 3, 2005 – 9 a.m.

The Scallop Oversight Committee will review the recommendations of the advisors and Plan Development Team to formulate and approve Framework 18 alternatives. The meeting will focus on the above listed issues as well as those carried forward from the July 19 Oversight Committee meeting.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**), at least 5 working days prior to the meeting date.

Dated: July 12, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–3794 Filed 7–15–05; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Schedule of Meetings

Listed below are the schedule of meetings of the Old Georgetown Board for 2006. The Commission's office is located at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. The Old Georgetown Board meetings are held on the 1st Thursday of each month, excluding August. Items of discussion affecting the appearance of Georgetown in Washington, DC may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov*. Inquiries regarding the agenda and request to submit written or oral statements should be addressed to Thomas E. Lebke, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, July 12, 2005.

Thomas Luebke,

Secretary.

Commission meetings	Submission deadlines
5 January	15 December.
2 February	12 January.
2 March	9 February.
6 April	16 March.
4 May	13 April.
1 June	11 May.
6 July	15 June.
7 September	17 August.
5 October	14 September.
2 November	12 October.
7 December	16 November.

[FR Doc. 05–14051 Filed 7–15–05; 8:45 am]

BILLING CODE 6330–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments (if any).

DATES: Comments must be submitted on or before August 17, 2005.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Division of Clearing and Intermediary Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5439; Fax: (202) 418–5536; e-mail: *lpatent@cftc.gov* and refer to OMB Control No. 3038–0021.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Bankruptcies of Commodity Brokers (OMB Control No. 3038–0021). This is a request for extension of a currently approved information collection.

Abstract: Regulations Governing Bankruptcies of Commodity Brokers, OMB Control No. 3038–0021—Extension.

The information collected pursuant to part 190 of the Commission's regulations under the Commodity Exchange Act (Act) is intended to protect, to the extent possible, the property of the public in the case of the bankruptcy of a commodity brokers. These rules are promulgated pursuant to the Commission's rulemaking authority contained in sections 4a(a), 4i, and 8a(5) of the Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

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 the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 3, 2005 (70 FR 22853).

Burden statement: The respondent burden for this collection is estimated to average .05 hours per response.

Respondents affected entities: 376.

Estimated number of responses: 6,173.

Estimated total annual burden on respondents: .05 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0021 in any correspondence.

Lawrence B. Patent, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 12, 2005.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–14063 Filed 7–15–05; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments (if any).

DATES: Comments must be submitted on or before August 17, 2005.

FOR FURTHER INFORMATION CONTACT: Gary Marinaitis, Division of Market Oversight, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5209; Fax: (202) 418–5527; e-mail *gmartinaitis@cftc.gov* and refer to OMB Control No. 3038–0015.

SUPPLEMENTARY INFORMATION:

Title: Copies of Crop and Market Information Reports (OMB Control No. 3038–0015). This is a request for extension of a currently approved information collection.

Abstract: Copies of Crop and Market Information Reports, OMB Control No. 3038–0015—Extension

The information collected pursuant to this rule, 17 CFR part 140, is in the public interest and is necessary for market surveillance. These rules are promulgated pursuant to the Commission's rulemaking authority contained in sections 4a(a), 4i, and 8a(5) of the Commodity Exchange Act, 7 U.S.C. 6a(1), 6i, and 12a(5).

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 the CFTC's regulations were published on December 30, 1981. *See* 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 3, 2005 (70 FR 22852).

Burden statement: The respondent burden for this collection is estimated to average .16 hours per response.

Respondents/Affected entities: 30.

Estimated number of responses: 30.

Estimated total annual burden on respondents: 5 hours.

Frequency of collection: On occasion.

Send comments regarding the burden estimated or any other aspects of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0015 in any correspondence.

Gary Martinaitis, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: July 12, 2005.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–14064 Filed 7–15–05; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0083]

Federal Acquisition Regulation; Information Collection; Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning qualification requirements. This OMB clearance currently expires on September 30, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 16, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Nelson, Contract Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Respondents: 2,207.
Responses Per Respondent: 100.
Annual Responses: 220,700.
Hours Per Response: .25.
Total Burden Hours: 55,175.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: July 13, 2005

Julia B. Wise

Director, Contract Policy Division

[FR Doc. 05–14072 Filed 7–15–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–133 and EL00–98–120]

California Independent System Operator; Notice of Filing

July 12, 2005.

Take notice that on June 30, 2005, the California Independent System Operator (CAISO) tendered for filing an informational filing to correct a clerical error found in the ISO Tariff, specifically, in Tariff Section 5.11.6.1.4.

Any person desiring to intervene or to protest in the above proceeding 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 Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is 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 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. on July 21, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3795 Filed 7–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–101–000]

Central Mississippi Generating Company, LLC; Attala Transmission LLC; Notice of Filing

July 11, 2005.

Take notice that on June 29, 2005, Central Mississippi Generating Company, LLC and Attala Transmission LLC (together, the Applicants) filed with the Commission a joint application pursuant to section 203 of the Federal Power Act for authorization of a disposition by sale of jurisdictional interconnection facilities located in Attala County, Mississippi. The Applicants requests an effective date of October 1, 2005.

Any person desiring to intervene or to protest in the above proceeding 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 Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is 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 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. on July 20, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3789 Filed 7–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR05–9–000]

Flint Hills Resources Alaska, LLC, et al.; Notice of Complaint and Request for Fast Track Processing

July 12, 2005.

Take notice that on July 11, 2005, Flint Hills Resources Alaska, LLC tendered for filing a Complaint, Request for Refunds or Reparations, and Request for Fast Track Processing against ConocoPhillips Alaska, Inc., Exxo Mobil Corporation, Tesoro Alaska Company, BP America Production Company, BP Exploration (Alaska) Inc., OXY USA Inc., Union Oil Company of California, Petro Star Inc., State of Alaska, BP Pipelines (Alaska) Inc., ConocoPhillips Transportation Alaska, Inc., ExxonMobil Pipeline Company, Koch Alaska Pipeline Company LLC, and Unocal Pipeline Company, Flint Hills Resources Alaska, LLC alleges that the portion of the Trans Alaska Pipeline System (TAPS) Quality Bank methodology relating to the valuation of the West Coast vacuum gas oil (VGO) cut is unjust and unreasonable under the Interstate Commerce Act and is otherwise unlawful. Flint Hill Resources Alaska, LLC requests the Commission immediately institute a new reference price of West Coast VGO, grant refunds, reparations, damages and other appropriate relief.

Flint Hills Resources Alaska, LLC states that copies of the Complaint were served on the contacts for the listed parties.

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 comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to 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 August 1, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3798 Filed 7–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–23–007]

New York Independent System Operator, Inc.; Notice of Compliance Filing

July 12, 2005.

Take notice that on July 1, 2005, New York Independent System Operator, Inc. (NYISO), in compliance with the Commission's May 18, 2005 Order, FERC ¶ 61,228 (2005), submitted revised Market Monitoring Plan and Open Access Transmission Tariff sheets with an effective date of July 1, 2005.

NYISO states that copies of this filing are being served, via first class mail, on all parties designated on the official service list maintained by the Secretary of the Commission in this proceeding

and on the Pennsylvania Public Utility Commission.

Any person desiring to intervene or to protest in the above proceeding 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 Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is 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 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. on July 21, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3796 Filed 7–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–89–004]

Upper Peninsula Power Company; Notice of Compliance Filing

July 12, 2005.

Take notice that on June 1, 2005, Upper Peninsula Power Company, (UPPCO) tendered for filing a refund report in compliance with the Commission's March 25, 2005 order in Docket No. ER95–1528–010, *et al., Wisconsin Public Service Corporation, et al.,* 110 FERC ¶ 61,353 (2005).

Any person desiring to intervene or to protest in the above proceeding 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 Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is 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 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. on July 22, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3797 Filed 7–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 11, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–373–002.

Applicants: Tiger Natural Gas, Inc.

Description: Tiger Natural Gas Inc. submits petition for acceptance of initial rate schedule, waivers, and blanket authority to engage in wholesale and retail electric power and energy transaction as a marketer.

Filed Date: 06/28/2005.

Accession Number: 20050708–0190.

Comment Date: 5 p.m. eastern time on Tuesday, July 19, 2005.

Docket Numbers: ER01–389–003.

Applicants: Calumet Energy Team, LLC.

Description: Calumet Energy Team, LLC (CET) submits notification of certain changes in the characteristics relied upon to grant market-based rate authority to CET and revised tariff sheets to incorporate housekeeping changes.

Filed Date: 06/30/2005.

Accession Number: 20050707–0239.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER01–1527–008; ER01–1529–008.

Applicants: Nevada Power Company; Sierra Pacific Power Company

Description: Nevada Power Company and Sierra Pacific Power Company submit an informational filing regarding change in status reporting obligation.

Filed Date: 06/30/2005.

Accession Number: 20050707–0240.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER02–2330–037.

Applicants: New England Power Pool Participants Committee; ISO New England Inc.

Description: New England Power Pool Participants Committee and ISO New England Inc., pursuant to the

Commission's order issued 12/21/04 (109 FERC ¶ 61,322 (2004)), submit a compliance filing addressing the plans and proposed timetable for implementing the special case nodal pricing.

Filed Date: 06/30/2005.

Accession Number: 20050708–0168.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER03–345–005.

Applicants: New England Power Pool Participants Committee.

Description: ISO New England Inc submits its semi-annual status report on load response programs.

Filed Date: 06/30/2005.

Accession Number: 20050707–0241.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER04–1174–004.

Applicants: Xcel Energy Operating Companies.

Description: Xcel Energy Services Inc on behalf of its operating company affiliates, Public Service Company of Colorado and Southwestern Public Service Company submits revised tariff sheets in compliance with the Commission's 5/19/05 order, 111 FERC ¶ 61,230 (2005).

Filed Date: 06/30/2005.

Accession Number: 20050708–0185.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–1186–000.

Applicants: Oklahoma Gas & Electric Company.

Description: Oklahoma Gas and Electric Company submits First Revised Rate Schedule FERC 146, certificate of concurrence regarding an agreement between Oklahoma Municipal Power Authority and Oklahoma Gas and Electric Company regarding credit for facilities and charges for direct assignment facilities, and attachment A, B and C.

Filed Date: 06/30/2005.

Accession Number: 20050706–0173.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–1187–000.

Applicants: NorthWestern Energy.

Description: NorthWestern Corporation d/b/a NorthWestern Energy submits a notice of cancellation of its Service Agreement 4–SD under its FERC Electric Tariff, Original Volume No. 1 (SD), NorthWestern Energy's Rate Schedule WS–1.

Filed Date: 06/30/2005.

Accession Number: 20050706–0150.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–1188–000.

Applicants: Midwest Energy, Inc.

Description: Midwest Energy, Inc. submits a notice of cancellation of FERC Rate Schedule 19, an Electric Power, Transmission and Service Contract between Midwest Energy and the Kansas Electric Power Cooperative, Inc.

Filed Date: 06/30/2005.

Accession Number: 20050706–0148.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–1191–000.

Applicants: Union Power Partners, L.P.

Description: Union Power Partners LP submits revisions to its FERC Electric Tariff Original Volume No. 1 by removing Original First Revised Sheet 2, which is the statement of policy and code of conduct with respect to the relationship between Union Power and Tampa Electric Company.

Filed Date: 06/30/2005.

Accession Number: 20050708–0175.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–1146–001.

Applicants: Shiloh I Wind Project LLC.

Description: Shiloh I Wind Project LLC submits a revision to its original application filed on 6/24/05 in ER05–1146–000.

Filed Date: 06/30/2005.

Accession Number: 20050708–0189.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–513–002.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, L.L.C. Transmission Owners, acting through the PJM and West Transmission Owners, submits revisions toi the PJM Open Access Transmission Tariff in compliance with the Commission's 5/31/05 order, 111 FERC ¶ 61,308 (2005).

Filed Date: 06/30/2005.

Accession Number: 20050708–0186.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–651–002.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits information relating to its 5/17/05 filing of an executed large generator interconnection agreement between SPP, FPL Energy Cowboy Wind, LLC and Public Service Company of Oklahoma.

Filed Date: 06/30/2005.

Accession Number: 20050707–0135.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–665–002.

Applicants: Barrick Goldstrike Mines Inc.

Description: Barrick Goldstrike Mines Inc. submits an amendment to its 4/26/05 filing in response to the Deficiency Letter issued by FERC on 6/23/05.

Filed Date: 07/06/2005.

Accession Number: 20050708–0200.

Comment Date: 5 p.m. eastern time on Wednesday, July 18, 2005.

Docket Numbers: ER05–1086–001.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits an amendment to its 6/7/05 filing in Docket No. ER05–1086–000.

Filed Date: 06/29/2005.

Accession Number: 20050708–0188.

Comment Date: 5 p.m. eastern time on Wednesday, July 20, 2005.

Docket Numbers: ER95–1528–012; ER96–1088–037; ER01–2659–006; ER02–2199–004; ER03–54–004; ER03–55–004; ER03–56–004; ER96–1858–017; ER03–674–004; ER99–3420–006; ER99–1936–005; ER01–1114–005; ER97–2758–012; ER05–89–005.

Applicants: Wisconsin Public Service Corporation; WPS Power Development, LLC and WPS Energy Services, Inc.; Combined Locks Energy Center, LLC; WPS Empire State, Inc.; WPS Beaver Falls Generation, LLC; WPS Niagara Generation, LLC; WPS Syracuse Generation, LLC; Mid-American Power, LLC; Quest Energy, LLC; Sunbury Generation, LLC; WPS Canada Generation, Inc. and WPS New England Generation, Inc.; WPS Westwood Generation, LLC; Advantage Energy, Inc.; Upper Peninsula Power Company.

Description: WPS Resources Corporation, on behalf of Wisconsin Public Service Corporation and its other subsidiaries listed above, submit a notice of change in status for market-based rate authority.

Filed Date: 06/30/2005.

Accession Number: 20050708–0184.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER96–3107–017.

Applicants: SE Holdings, LLC.

Description: Strategic Energy, LLC submits the market power update regarding SE Holdings, LLC in compliance with the Commission's order issued 5/31/05, 111 FERC ¶ 61,295 (2005).

Filed Date: 06/30/2005.

Accession Number: 20050707–0244.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER99–230–009; ER03–762–009; ER03–533–002.

Applicants: Alliant Energy Corporate Services, Inc.; Alliant Energy Neenah, LLC.

Description: Alliant Energy Corporate Services, Inc. (AECS), on behalf of itself and Alliant Energy Neenah, LLC (Alliant Energy Neenah), submits a notice of change in status with respect to AECS's and Alliant Energy Neehah's market-based rate authority.

Filed Date: 06/30/2005.
Accession Number: 20050707–0238.
Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER99–2774–005.
Applicants: Duke Energy Trading and Marketing, L.L.C.
Description: Duke Energy Trading and Marketing, L.L.C. submits revisions to its market-based rate tariff to include the reporting requirement for changes in status adopted in Order 652.
Filed Date: 06/29/2005.
Accession Number: 20050708–0187.
Comment Date: 5 p.m. eastern time on Wednesday, July 20, 2005.

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 and the Applicant.

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Linda Mitry,
Deputy Secretary.
[FR Doc. E5–3790 Filed 7–15–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

July 12, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–167–002.
Applicants: Strategic Energy Management Corporation.
Description: Strategic Energy Management Corporation submits its updated market power study and a revised market-based rate tariff to include the Market Behavior Rules and the reporting requirements adopted by the Commission in Order No. 652.
Filed Date: 07/05/2005.
Accession Number: 20050708–0163.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER00–2019–017, ER01–819–009, ER03–608–006.
Applicants: California Independent System Operator Corporation
Description: California Independent System Operator Corporation submits revised tariff sheets in compliance with the Commission's orders issued 12/21/04, 109 FERC ¶ 61,301 (2004) and 6/2/05, 111 FERC ¶ 61,337 (2005).
Filed Date: 07/05/2005.
Accession Number: 20050708–0183.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER01–205–009, ER98–2640–007, ER98–4590–005, ER99–1610–012.
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., on behalf of itself and Northern States Power Company, Northern States Power Company, Northern States Power Company (Wisconsin), Public Service Company of Colorado, and Southwestern Public Service Company, submits a compliance filing pursuant to the Commission's 6/2/05 order, 111 FERC ¶ 61,343 (2005).
Filed Date: 07/05/2005.
Accession Number: 20050712–0278.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–366–001.
Applicants: Sierra Pacific Power Company.
Description: Sierra Pacific Power Company submits withdrawal of application filed 12/21/04.
Filed Date: 07/05/2005.
Accession Number: 20050705–5029.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER01–542–001.
Applicants: STI Capital Company.
Description: STI Capital Company submits its triennial market power review in support of its market-based rate authority and revised market-based rate tariff to incorporate Market Behavior Rules and reporting requirements adopted by the Commission in Order 652.
Filed Date: 07/06/2005.
Accession Number: 20050708–0171.
Comment Date: 5 p.m. eastern time on Wednesday, July 27, 2005.

Docket Numbers: ER05–1151–001, ER05–226–003.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits an amendment to its 6/27/05 filing of a revised Interchange and Interconnection Agreement between Grand Revised Dam Authority, Public Service Co of Oklahoma and SPP in Docket Nos. ER05–1151–000 and ER05–226–002.
Filed Date: 07/06/2005.
Accession Number: 20050711–0065.
Comment Date: 5 p.m. eastern time on Wednesday, July 27, 2005.

Docket Numbers: ER05–1193–000, ER05–237–002, ER05–238–002, ER05–239–002, ER05–240–003, ER05–241–002, EL05–70–004.
Applicants: American Transmission Company, LLC; Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to Attachment H–1 of its OATT and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1, to reflect the addition of several Distribution-Transmission Interconnection Agreements by and between American Transmission Company, LLC and various municipal distribution systems as service agreements under the MISO Energy Markets Tariff.
Filed Date: 07/05/2005.

Accession Number: 20050708–0172.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–1194–000.
Applicants: Yaka Energy LLC.
Description: Yaka Energy, LLC submits a petition of acceptance of initial Rate Schedule FERC No. 1 under which it will engage in wholesale electric power and energy transactions as a marketer, the granting of certain waivers and certain blanket authority approvals.
Filed Date: 07/05/2005.
Accession Number: 20050711–0078.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–1195–000.
Applicants: Silverhill LTD.
Description: Silverhill Ltd. submits its petition for acceptance of initial Rate Schedule FERC No. 1 under which it will engage in wholesale electric power and energy transactions as a marketer, the granting of certain waivers and blanket authority approvals under ER05–1195.
Filed Date: 07/05/2005.
Accession Number: 20050711–0077.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–1196–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits an executed interim interconnection service agreement with Calvert Cliffs Nuclear Power Plant, Inc. and Baltimore Gas and Electric Company and notice of cancellation of an interim interconnection service agreement.
Filed Date: 07/05/2005.
Accession Number: 20050711–0079.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–1197–000.
Applicants: Northern States Power Company.
Description: Xcel Energy Services, Inc on behalf of Northern States Power Co submits a notice of cancellation terminating the Arpin Substation Benefit Area Joint Operating, Planning & Cost Sharing Agreement, FERC electric rate Schedule 473 dated 6/1/88 between NSP and the City of Marshfield, a Wisconsin municipal corporation acting by and thru the Marshfield Electric & Water Department, Wisconsin Power and Light Company, and Wisconsin Electric Power Company.
Filed Date: 07/05/2005.
Accession Number: 20050711–0076.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–1198–000.
Applicants: AMVEST Coal Sales, Inc.
Description: AMVEST Coal Sales, Inc. submits a notice of cancellation of its market-based rate tariff.
Filed Date: 07/05/2005.
Accession Number: 20050711–0075.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–1199–000.
Applicants: Carolina Power & Light Company.
Description: Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc. submits Third Revised Rate Schedule 121, the power coordination agreement with North Carolina Eastern Municipal Power Agency.
Filed Date: 07/06/2005.
Accession Number: 20050711–0057.
Comment Date: 5 p.m. eastern time on Wednesday, July 27, 2005.

Docket Numbers: ER05–939–001.
Applicants: Vesta Trading LP.
Description: Vesta Trading LP's amended petition for acceptance of initial rate schedule waivers and blanket authority requesting acceptance of FERC Electric Tariff, Original Volume 1 amending its original filing of 5/5/05 in Docket No. ER05–939–000.
Filed Date: 07/05/2005.
Accession Number: 20050707–0129.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–953–001.
Applicants: Phelps Dodge Power Marketing, LLC.
Description: Phelps Dodge Power Marketing, LLC submits a supplement to its Application for Market-based Rate Authorization, Certain Waivers and Blanket Authorizations filed 5/10/05 in Docket No. ER05–953–000.
Filed Date: 07/06/2005.
Accession Number: 20050711–0240.
Comment Date: 5 p.m. eastern time on Wednesday, July 27, 2005.

Docket Numbers: ER05–981–001.
Applicants: Pocono Energy Services, LLC.
Description: Pocono Energy Services LLC submits an amended Petition for Acceptance of Initial Rate Schedule, Waivers and Blanket Authority filed 5/18/05 in Docket No. ER05–981–000.
Filed Date: 07/05/2005.
Accession Number: 20050708–0173.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER05–991–001.
Applicants: Commonwealth Chesapeake Company, LLC
Description: Commonwealth Chesapeake Company, LLC's submits an amendment to its 5/19/05 filing in Docket No. ER05–991–000 of notification of change in characteristics relied upon to grant revised market-based rate tariff.
Filed Date: 07/06/2005.
Accession Number: 20050711–0069.
Comment Date: 5 p.m. eastern time on Wednesday, July 27, 2005.

Docket Numbers: ER94–1188–036, ER98–4540–005, ER99–1623–005, ER98–1279–007.
Applicants: LG&E Energy Marketing Inc.; Louisville Gas & Electric Company; Kentucky Utilities Company; Western Kentucky Energy Corporation.
Description: LG&E Energy Marketing Inc., Louisville Gas & Electric Company, Kentucky Utilities Company and Western Kentucky Energy Corporation submit their second and final filing in compliance with FERC's 5/5/05 order, 111 FERC ¶61,153 (2005).
Filed Date: 07/05/2005.
Accession Number: 20050708–0137.
Comment Date: 5 p.m. eastern time on Tuesday, July 26, 2005.

Docket Numbers: ER96–1551–013; ER01–615–009.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits its change in status report relating to its completion of the acquisition by Resources of TNP Enterprises, Inc.
Filed Date: 07/06/2005.
Accession Number: 20050711–0063.
Comment Date: 5 p.m. eastern time on Wednesday, July 27, 2005.

Docket Numbers: ER99–2506–003.
Applicants: Deseret Generation & Trans Co-operative, Inc.
Description: Deseret Generation & Transmission Co-operative, Inc submits its second updated triennial market power analysis in accordance with FERC's Order dated 5/27/99 in Docket No. ER99–2506–000.
Filed Date: 06/30/2005.
Accession Number: 20050708–0201.
Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER99–2923–003.
Applicants: Phelps Dodge Energy Services, LLC.
Description: Phelps Dodge Energy Services, LLC submits a supplement to its triennial update market analysis and notice of change in status filed on 5/10/05 in Docket No. ER99–2923–002.
Filed Date: 07/06/2005.
Accession Number: 20050708–0049.
Comment Date: 5 p.m. eastern time on Wednesday, July 27, 2005.

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 and 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.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–3799 Filed 7–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

July 12, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER01–205–008; ER98–2640–006; ER98–4590–004; ER99–1610–011.

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., on behalf of itself and Xcel Energy Operating Companies, namely Northern States Power Company, Northern States Power Company (Wisconsin), Public Service Company of Colorado, and Southwestern Public Service Company submits a change in status report and compliance filing.

Filed Date: 7/1/2005.

Accession Number: 20050708–0162.

Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER01–3155–008; EL01–45–016; ER01–1385–017.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits revised tariff sheets in compliance with the Commission's 6/16/05 order, 111 FERC 61,399 (2005).

Filed Date: 7/1/2005.

Accession Number: 20050708–0167.

Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER02–1785–003.

Applicants: Thermo Cogeneration Partnership L.P.

Description: Thermo Cogeneration Partnership, L.P. submits its triennial market power analysis in support of its market-based rate authorization and revised tariff sheets to incorporate the requirements of Order No. 652.

Filed Date: 7/1/2005.

Accession Number: 20050707–0131.

Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER04–901–001.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc., as agent for the Entergy Operating Companies, submits revised tariff sheets in compliance with the Commission's order issued 6/1/05, 111 FERC 61,314 (2005).

Filed Date: 7/1/2005.

Accession Number: 20050706–0172.

Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–6–031; EL04–135–033; EL02–111–051; EL03–212–047

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to its Open Access Transmission and Energy Market Tariffs, FERC Electric Rate, Third Revised Volume 1, in compliance with the Commission's order issued 6/10/05, 111 FERC 61,387 (2005).

Filed Date: 6/30/2005.

Accession Number: 20050707–0243.

Comment Date: 5 p.m. eastern time on Thursday, July 21, 2005.

Docket Numbers: ER05–1024–001.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits a substitute executed service interconnection agreement with Eastern Landfill, LLC and Baltimore Gas and Electric Company, which amends PJM's 5/25/05 filing in Docket No. ER05–1024–000.

Filed Date: 7/1/2005.

Accession Number: 20050707–0130.

Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–1181–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection LLC submits revisions to Schedule 9 of its open access transmission tariff to change the rate design of its administrative cost recovery from formula rates to stated rates and revisions to its Amended and Restated Operating Agreement.

Filed Date: 7/1/2005.

Accession Number: 20050706–0147.

Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–1182–000.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services, Inc. on behalf of Public Service Company of Colorado (PSCo) submits a Large Generator Interconnection Agreement between PSCo and Spring Canyon, LLC.

Filed Date: 7/1/2005.

Accession Number: 20050706–0145.

Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–1183–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits revisions to their open access transmission tariff.

Filed Date: 7/1/2005.

Accession Number: 20050706–0175.

Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–1184–000.

Applicants: Perryville Energy Partners, L.L.C.

Description: Perryville Energy Partners, LLC submits its open access transmission tariff in compliance with the Commission's Order issued on 3/22/05 in Docket No. ER05–191–000.

Filed Date: 7/1/2005.

Accession Number: 20050706–0176.
Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–1185–000.
Applicants: New England Power Pool Participants Committee.
Description: The New England Power Pool Participants Committee submits a transmittal letter along with a counterpart signature page of the New England Power Pool Agreement, dated 9/1/71 as amended (second restated NEPOOL agreement) executed by Z–TECH, LLC and a letter from Direct Commodities Trading, Inc. providing notice of the termination of its NEPOOL membership and participation in the New England Market.
Filed Date: 7/1/2005.
Accession Number: 20050706–0149.
Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–1189–000.
Applicants: Carolina Power & Light Company.
Description: Progress Energy, Inc., on behalf of its subsidiary Carolina Power & Light Company (CP&L) d/b/a Progress Energy Carolinas, Inc., submits (1) a network integration transmission service agreement and network operating agreement between CP&L and North Carolina Eastern Municipal Power Agency (NCEMPA), (2) related amendments to the Power Coordination Agreement between CP&L and NCEMPA, and (3) a 2010 Transition Agreement between CP&E and NCEMPA.
Filed Date: 7/1/2005.
Accession Number: 20050706–0174.
Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–1192–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits revisions to its Open Access Transmission Tariff to comply with Order 2003–C.
Filed Date: 7/1/2005.
Accession Number: 20050708–0174.
Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER05–784–001.
Applicants: California Independent System Operator Corporation.
Description: California Independent System Operator Corporation submits its compliance filing pursuant to FERC's 6/3/05 letter order in Docket No ER05–784–000, *et al.*
Filed Date: 7/1/2005.
Accession Number: 20050708–0170.
Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER91–569–027, *ER01–666–004, ER01–1675–002, ER01–1804–003, ER02–862–004.*
Applicants: Entergy Services, Inc.; Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Power, Inc.; EWO Marketing, L.P.; Entergy Solutions Supply Ltd.; Warren Power, LLC; Entergy Power Ventures, L.P.
Description: Entergy Services, Inc., on behalf of the above-referenced Entergy Affiliates, reports to the Commission a non material change in status pursuant to the reporting requirements of Order 652.
Filed Date: 7/1/2005.
Accession Number: 20050708–0166.
Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER96–719–005.
Applicants: MidAmerican Energy Company.
Description: MidAmerican Energy Company submits additional information concerning its domestic energy affiliates and revised market-based rate tariff sheets that include, among other things, the Commission's change of status reporting requirements in compliance with FERC's 6/1/05 Order, 111 FERC 61,320 (2005).
Filed Date: 7/1/2005.
Accession Number: 20050707–0133.
Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

Docket Numbers: ER98–2535–005.
Applicants: Hafslund Energy Trading LLC.
Description: Hafslund Energy Trading LLC submits its updated triennial market power report in compliance with the Commission's 5/31/05 Order, 111 FERC 61,295 (2005).
Filed Date: 7/1/2005.
Accession Number: 20050707–0132.
Comment Date: 5 p.m. eastern time on Friday, July 22, 2005.

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 and the Applicant.

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Linda Mitry,
Deputy Secretary.
[FR Doc. E5–3800 Filed 7–15–05; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7939–5]

California State Motor Vehicle Pollution Control Standards; Request for Waiver of Federal Preemption; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of opportunity for public hearing and comment.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to the California on-highway heavy-duty vehicle engine regulations for 2007 and subsequent model year to include new Engine Manufacturer Diagnostics (EMD) requirements. By letter dated March 7, 2005, CARB submitted a request that EPA grant a waiver of preemption under section 209(b) of the Clean Air Act (CAA), 42 U.S.C. 7543(b) for these amendments. This notice announces

that EPA has tentatively scheduled a public hearing concerning California's request and that EPA is accepting written comment on the request.

DATES: EPA has tentatively scheduled a public hearing concerning CARB's request on August 17, 2005 beginning at 10 a.m. EPA will hold a hearing only if a party notifies EPA by August 8, 2005, expressing its interest in presenting oral testimony. By August 12, 2005, any person who plans to attend the hearing should call David Dickinson at (202) 343–9256 to learn if a hearing will be held. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments by September 26, 2005.

ADDRESSES: EPA will make available for public inspection at the Air and Radiation Docket and Information Center written comments received from interested parties, in addition to any testimony given at the public hearing. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 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 and Radiation Docket is (202) 566–1743. The reference number for this docket is OAR–2005–100. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at the address noted below. If EPA receives a request for a public hearing, EPA will hold the public hearing at 1310 L St., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David Dickinson, Certification and Compliance Division (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Telephone: (202) 343–9256, Fax: (202) 343–2804, e-mail address: *Dickinson.David@epa.gov.* EPA will make available an electronic copy of this Notice on the Office of Transportation and Air Quality's (OTAQ's) homepage (*http://www.epa.gov/otaq/*). Users can find this document by accessing the OTAQ homepage and looking at the path entitled ''Regulations.'' This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (*http://www.epa.gov/docs/fedrgstr/EPA-AIR/*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur. Parties wishing to present oral testimony at the public hearing should provide written notice to David Dickinson at: U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6405J), Washington, DC 20460. Telephone: (202) 343–9256.

Docket: An electronic version of the public docket is available through EPA's electronic public docket and comment system. You may use EPA dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although a part of the official docket, the public docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Once in the edocket system, select ''search,'' then key in the appropriate docket ID number.

SUPPLEMENTARY INFORMATION:

(A) Background and Discussion

Section 209(a) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7543(a), provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Section 209(b)(1) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for any state that has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the state determines that the state standards will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards. California is the only state that is qualified to seek and receive a waiver under section 209(b). The Administrator must grant a waiver unless he finds that (A) the determination of the state is arbitrary and capricious, (B) the state does not need the state standards to meet compelling and extraordinary conditions, or (C) the state standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.

CARB's March 7, 2005 letter to the Administrator notified EPA that it had adopted amendments to its heavy-duty vehicle engine program. These amendments are to title 13, California Code of Regulations (CCR), section 1971. This regulation, as well as other California regulations, define an on-road, heavy-duty vehicle engine as an engine used in a motor vehicle having a gross vehicle weight rating greater than 14,000 pounds that is certified to the requirements of title 13, CCR sections 1956.1 or 1958.8.

Please provide comment as to whether (a) California's determination that its amendments as referenced in its March 7, 2005, request letter, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) California needs separate standards to meet compelling and extraordinary conditions, and (c) California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Clean Air Act.

Procedures for Public Participation

In recognition that public hearings are designed to give interested parties an opportunity to participate in this proceeding, there are no adverse parties as such. Statements by participants will not be subject to cross-examination by other participants without special approval by the presiding officer. The presiding officer is authorized to strike from the record statements that he or she deems irrelevant or repetitious and to impose reasonable time limits on the duration of the statement of any participant.

If hearing(s) are held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing(s) to obtain a copy of the transcript at their own expense. Regardless of whether public hearing(s) are held, EPA will keep the record open until September 26, 2005. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record of the public hearing(s), if any, relevant written submissions, and other information that he deems pertinent. All information will be available for

inspection at EPA Air Docket. (OAR–2005–100). Persons with comments containing proprietary information must distinguish such information from other comments to the greatest possible extent and label it as ''Confidential Business Information'' (CBI). If a person making comments wants EPA to base its decision in part on a submission labeled CBI, then a nonconfidential version of the document that summarizes the key data or information should be submitted for the public docket. To ensure that proprietary information is not inadvertently placed in the docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: July 12, 2005.

Jeffrey R. Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 05–14069 Filed 7–15–05; 8:45 am]

BILLING CODE 6560–50–P

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

OFFICE OF MANAGEMENT AND BUDGET

Request for Information Relating to Research Awards

AGENCY: Executive Office of the President, Office of Science and Technology Policy (OSTP) and Office of Management and Budget (OMB), Office of Federal Financial Management (OFFM).

ACTION: Request for information relating to the use of multiple Principal Investigators (PIs) on awards made under Federal research and research-related programs.

SUMMARY: Many areas of today's research require multi-disciplinary teams in which the intellectual leadership of the project is shared among two or more individuals. To facilitate this team approach through recognition of the contributions of the team leadership members, OSTP issued a memorandum to all Federal research agencies on January 4, 2005, requiring them to formally allow more than one PI on individual research awards. The Federal agencies are now seeking input from the research community—scientists, research administrators, and organizations that represent components of the scientific research community—on how best to implement this policy. The current Request for Information (RFI) poses a series of questions around core elements that may comprise each agency's implementation plan. These elements include:

(1) Statement of what constitutes a PI; (2) designation of contact PI; (3) application instructions for listing more than one PI; (4) PIs at different institutions; (5) access to award and review information, and (6) access to public data systems.

DATES: Comments must be received by September 16, 2005.

ADDRESSES: Comments should be addressed to Beth Phillips, Office of Federal Financial Management, 725 17th Street, NW., Washington, DC 20503; telephone 202–395–3993; FAX 202–395–3952; e-mail *ephillip@omb.eop.gov.* Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Please include ''Multiple Principal Investigators'' in the subject line of the e-mail message, and your name, title, organization, postal address, telephone number and e-mail address in the text of the e-mail message. Please also include the full body of your comments in the test of the e-mail message and as an attachment.

FOR FURTHER INFORMATION CONTACT: For information on the Research Business Models (RBM) Subcommittee see the RBM Web site at *http://rbm.nih.gov,* or contact Geoff Grant at the Office of Science and Technology Policy at 725 17th Street, NW., Washington, DC 20503; e-mail *ggrant@ostp.eop.gov;* telephone 202–456–6131; FAX 202–456–6027.

SUPPLEMENTARY INFORMATION:

I. Background on RBM

This proposal is an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science (CoS), a committee of the National Science and Technology Council (NSTC). The RBM Subcommittee's objectives include:

- Facilitating a coordinated effort across Federal agencies to address policy implications arising from the changing nature of scientific research, and
- Examining the effects of these changes on business models for the conduct of scientific research sponsored by the Federal government.

The Subcommittee used public comments, agency perspectives, and input from a series of regional public meetings to identify priority areas in which it would focus its initial efforts. In each priority area, the Subcommittee is pursuing initiatives to promote, as appropriate, either common policy, the streamlining of current procedures, or the identification of agencies' and institutions' ''effective practices.'' As information about the initiatives becomes available, it is posted at the Subcommittee's Internet site *http://rbm.nih.gov.*

II. Background on the Plan To Recognize Multiple PIs on Federal Research Projects

Many areas of research, in particular, translations of complex discoveries into useful applications, increasingly require multi-disciplinary and inter-disciplinary teams. Innovation and progress still spring from and depend on creative individual investigators, but collaborative synergy plays an increasingly important role in advancing science and engineering. In deciding whether to do research as members of multi-disciplinary teams, individual investigators must consider how credit for their participation would be judged by the current incentive and reward policies of their academic institutions, by their funding agencies, and by colleagues within their own disciplines. The present system takes its structure from the paradigm of the single ''Principal Investigator''. Although this model has worked well and encourages individual creativity and productivity, it also can discourage team efforts.

Multi-disciplinary research teams can be organized in a variety of ways. Research teams vary in terms of size, hierarchy, location of participants, goals, and structure. Depending on the size and the goals, the management structure of a team may include: a director and/or multiple directors, assistant or associate directors, managers, group leaders, team leaders, investigators, and others as needed. Regardless of how a research team is organized, a pertinent and important question is how to apportion credit fairly if multiple individuals provide the intellectual leadership and direction of the team effort.

Acting on the recommendation of the RBM Subcommittee, the CoS concluded that team research would be enhanced if all Federal agencies allowed more than one PI on individual research awards. Some agencies already do this, either formally or informally, but the CoS action, which led to a directive to all research agency heads by the Director, OSTP, dated January 4, 2005, extends the practice to all research agencies as a matter of policy.

Federal Implementation Effort

Accordingly, the federal research agencies will allow more than one PI to be named on grant and contract proposals and awards. The expectation is that a proposing institution will name as PIs in its proposal those individuals who share the major authority and responsibility for leading and directing the project, intellectually and logistically. This concept is similar to the widely accepted practice of recognizing the contributions and responsibilities of business partners.

The agencies recognize that teams frequently cut across institutional and geographic boundaries and that team efforts therefore often involve subcontracting or consortia arrangements between different institutions. Based on the experience that some agencies already have with research teams spanning multiple institutions, the agencies are relatively confident that recognition of personnel involved in multi-institution research projects will not substantively alter these well established relationships between institutions.

It should be emphasized that naming multiple PIs for a proposed research project is solely at the discretion of the proposing institution(s). The government's recognition of more than one individual as PI also is not intended to alter the institution's role in assigning administrative or reporting responsibilities, nor the working relationship between team members as they collaboratively allocate resources within the team, subject to any constraints of the awardee institution or the Federal agency under the award terms and conditions, and as they apportion credit for research accomplishments. Compliance requirements will continue to apply to individuals and institutions, as they do today, regardless of the designation of multiple PIs.

III. Request for Information

The Federal agencies have not fully developed their implementation of the new OSTP policy on recognition of multiple PIs. The implementation will address several core issues, which are listed below with some questions for which public input is sought in developing agency strategies. The Research Business Models Subcommittee will work to coordinate a cross-government implementation of this policy, to the extent practicable, as agencies take the public comments into account and finalize their plans. The cross-government implementation will then be published in the Research Business Models Toolkit.

Proposed Elements of Agency Implementation Plans

(1) Statement of what constitutes a PI: The current expectation is to allow institutions to propose as a PI any investigator whom they judge to have the appropriate level of authority and responsibility related to the proper conduct of the study and submission of required reports to the agencies. All PIs would be named in the award. The term ''Co-Principal Investigator'', as currently used by some agencies, would no longer be used, to avoid any confusion about relative status of PIs on the project.

Q 1: Are there any difficulties associated by listing more than one individual as a PI? If so, please elaborate.

(2) Designation of Contact PI: To facilitate communication, the institution will be required to identify a Contact PI, to whom agency program officials will direct all communications related to scientific, technical, and budgetary aspects of the project for which agency staff would normally contact the single PI. By recognizing a person as a Contact PI, a Federal agency would not itself confer any special privileges on that person or any additional responsibilities, other than ensuring that all PIs receive information that the agency transmits. While the designation of the Contact PI is at the discretion of the proposing institution, he or she would normally be from that institution. If an institution does not propose a Contact PI, then the funding agency will use the first listed PI as the default for that role.

Q 2: Are there any difficulties that would be created by the designation of one PI as the Contact PI? If so, please describe. Are there issues that would affect institutions?

(3) Application instructions for listing more than one PI: Each agency would specify how its standard application procedures would be modified to reflect the overall policy accommodating multiple PIs. This may include instructions for describing, within the research plan, the specific areas of responsibility for each PI and how the team will function. In the case of more large-scale, complex multi-disciplinary projects (*e.g.*, center grants, multi-site clinical trials) agencies already have in place special mechanisms with requirements for management plans that address issues of coordination and decision making within those projects. Such projects are typically solicited through a special funding opportunity (*e.g.*, Request for Applications or Proposals), and this practice would continue.

Q 3: What issues should the agencies consider in developing their instructions for applications naming more than one PI?

(4) PIs at different institutions: Multi-disciplinary research generally is performed by teams of researchers with strengths across a number of science and engineering specialties. To assemble teams with the requisite expertise, PIs at institutions with strengths in different disciplines that bear on a research question frequently collaborate to propose and carry out the work jointly. Therefore, a multi-disciplinary team's PIs often are from different institutions and, when only a single institution is involved, the PIs are frequently from separate academic departments. One element of each Federal agency's implementation therefore is accommodating recognition of multiple PIs from different institutions. Making one award to a single lead institution often is the best way to ensure good programmatic coordination of the overall team effort, with subawards from the lead institution to support the research efforts of the other institutions. Making separate awards with PIs at each collaborating institution sometimes is a better approach and, occasionally, an award to a consortium of institutions is most advantageous. The key for each agency is to specify a method for recognizing multiple PIs that is consistent with the overall policy and that works for the types of business arrangements that the agency uses to support multidisciplinary research.

Q 4: Recognizing that agencies differ in the structure of their business arrangements with institutions, are there ways for the agencies to recognize PIs for a team effort involving multiple departments or institutions? What issues should the agencies consider in deciding on the most appropriate award structure?

(5) Access to award and review information: Agencies that grant access to award information to the PI likely would broaden that access to all named PIs. Agencies that share peer review information with the PI for a proposal

also are considering whether to broaden that access to all named PIs.

Q 5: What are the benefits of granting access to award and review information to all named PIs, not just the Contact PI? What are the difficulties, if any, in granting such access?

(6) Access to public data systems: Each agency will describe the data system(s) that will list PIs and, if the public may directly access those systems, how to access them. The current proposal is to have all PIs named on the award statement listed in the agency data system.

Q 6a: What are the benefits, if any, from listing more than one PI in agency databases? What are the difficulties, if any, with such listings?

Q 6b: Would use of agency data systems with PI information, warrant an investment in alterations to such systems?

Other Considerations

Q 7: Overall, how will the changes proposed for official recognition of multiple PIs benefit multi-disciplinary and inter-disciplinary research? Would the proposed changes help or harm the process of cooperation among researchers on a collaborative project?

Q 8: What other suggestions do you have for facilitating the recognition of multiple PIs?

Kathie L. Olsen,

Associate Director for Science, Office of Science and Technology Policy.

Linda M. Combs,

Controller, Office of Federal Financial Management.

[FR Doc. 05–14015 Filed 7–15–05; 8:45 am]

BILLING CODE 3110–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

July 12, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information, subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 16, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0874.

Title: Consumer Complaint Form/ Obscene, Profane, and Indecent Complaint Form.

Form Number: FCC 475 and FCC 475–B.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities; Not-for-profit institutions; Federal government; State, local or Tribal Government.

Number of Respondents: FCC Form 475—83,287; FCC Form 475–B—1,271,332.

Estimated Time per Response: 30 minutes per form.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: FCC Form 475—41,644 hours; FCC Form 475–B—635,666 hours.

Total Annual Cost: None.

Privacy Impact Assessment: Yes.

Needs and Use: FCC Form 475, Consumer Complaint Form, allows the Commission to collect detailed data from consumers of the practices of common carriers. This information contained in the collection will allow consumers to provide the Commission with the relevant information required to help consumers develop a concise statement outlining the issue in dispute. The Commission uses the information to assist in resolving informal complaints and the collected data required to assess the practices of common carriers and as a part of investigative work performed by federal and state law enforcement agencies to monitor carrier practices and promote compliance with federal and state requirements. The data may ultimately become the foundation for enforcement actions and/or rulemaking proceedings, as appropriate. The Commission asks for the complainant's contact information in the first ten fields, including, address, telephone number and e-mail address. The Form 475 also asks that the consumer briefly describe their complaint including the company involved, the account numbers, important dates, and the resolution the consumer is seeking.

FCC Form 475–B, Obscene, Profane, and Indecent Complaint Form, allows the Commission to collect detailed data from consumers on the practices of those entities that may air obscene, profane and indecent programming by giving consumers an opportunity, for the first time, to use a specific form to delineate the consumer's complaint. Form 475–B will be used only for complaints associated with indecent, profane, and obscene programs. This information contained in the collection will allow consumers to provide the Commission with the relevant information to help consumers develop a concise statement outlining the issue in dispute thereby minimizing the amount of time it takes to file a complaint, minimizing confusion on what information the Commission requires, and improving the complaint process and the overall quality of the complaints received. Form 475–B will include fields that will ask for the complainant's contact information, including name, address, e-mail address, and telephone number. Form 475–B will also include a section that asks for information to help identify the station that aired the alleged indecent, profane, and/or indecent material, including the network's name, name of the station, name of the particular program including host or personality/ DJ, time of the program, the time zone, the date of the program and the community where the material was aired. The last section on Form 475–B asks the complainant to describe the incident and to include as much detail

as possible about specific words, languages, and images, to help the Commission determine whether the program was, in fact, obscene, profane, or indecent. The data may ultimately become the foundation for enforcement actions and/or rulemaking proceedings, as appropriate.

The information will strengthen the effectiveness of the Commission's rules in deterring obscene, profane, and indecent content and programming.

Note: In this document, The Commission corrects inaccuracies published in 70 FR 38922, July 6, 2005, regarding OMB Collection No. 3060–0874.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–14062 Filed 7–15–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, July 19, 2005, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Notice and Request for Public Comment Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).

Memorandum and resolution re: Final Rule Amending

Part 335 to Conform with the Requirements of the Securities Exchange Act.

Memorandum and resolution re: Federal Register Notice of an Altered Privacy Act System of Records.

Discussion Agenda

Memorandum and resolution re: Proposed Amendment to Part 363 Annual Audit and Reporting Requirements.

Memorandum and resolution re: New Proposed Rule on Insurance Coverage of Funds Underlying Stored Value Cards and Other Nontraditional Access Devices.

Memorandum and resolution re: Advance Notice of Proposed Rulemaking on Petition for Rulemaking to Preempt Certain State Laws.

Memorandum and resolution re: Notice of Proposed Rulemaking Implementing Senior Examiner Post-Employment Restrictions.

Memorandum and resolution re: Community Reinvestment Act Final Rule.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); or (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: July 12, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E5–3780 Filed 7–15–05; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

July 15, 2005.

The Federal Maritime Commission (FMC or Commission) has submitted the following information collection requirements to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Comments regarding (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Knuffman, Desk Officer for FMC, 725–17th Street, NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806, and to Derek O. Scarbrough, Chief Information Officer, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (telephone: (202) 523–5800), *cio@fmc.gov.* Copies of the submission(s) may be obtained by contacting Jane Gregory on 202–523–5800 or e-mail: *jgregory@fmc.gov.*

DATES: Written comments should be received on or before August 17, 2005, to be assured of consideration.

SUPPLEMENTARY INFORMATION:

On May 9, 2005, the FMC published a notice and request for comments in the **Federal Register** (70 FR 24413) regarding the agency's request for continued approval from OMB for information collections as required by the Paperwork Reduction Act of 1995. The FMC received no comments on any of the requests for extensions of OMB clearance.

The FMC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Information Collections Open for Comment

Title: 46 CFR Part 540—Application for Certificate of Financial Responsibility/Form FMC–131.

OMB Approval Number: 3072–0012 (Expires August 31, 2005).

Abstract: Sections 2 and 3 of Public Law 89–777 (46 U.S.C. app. 817(d) and (e)) require owners or charterers of passenger vessels with 50 or more passenger berths or stateroom accommodations and embarking passengers at United Stated ports and territories to establish their financial responsibility to meet liability incurred for death or injury to passengers and other persons, and to indemnify passengers in the event of nonperformance of transportation. The Commission's Rules at 46 CFR part 540 implement Public Law 89–777 and specify financial responsibility coverage requirements for such owners and charterers.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The information will be used by the Commission's staff to

ensure that passenger vessel owners and charterers have evidenced financial responsibility to indemnify passengers and others in the event of nonperformance or casualty.

Frequency: This information is collected when applicants apply for a certificate or when existing certificants change any information in their application forms.

Type of Respondents: The types of respondents are owners, charterers and operators of passenger vessels with 50 or more passenger berths that embark passengers from U.S. ports or territories.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 50.

Estimated Time Per Response: The time per response ranges from .5 to 6 person-hours for reporting and recordkeeping requirements contained in the rules, and 8 person-hours for completing Application Form FMC–131. The total average time for both requirements for each respondent is 31.48 person-hours.

Total Annual Burden: The Commission estimates the total person-hour burden at 1,574 person-hours.

Title: 46 CFR Part 565—Controlled Carriers.

OMB Approval Number: 3072–0060 (Expires August 31, 2005).

Abstract: Section 9 of the Shipping Act of 1984 requires that the FMC monitor the practices of controlled carriers to ensure that they do not maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. 46 CFR part 565 establishes the method by which the Commission determines whether a particular ocean common carrier is a controlled carrier subject to section 9 of the Shipping Act of 1984. When a government acquires a controlling interest in an ocean common carrier, or when a controlled carrier newly enters a United States trade, the Commission's rules require that such a carrier notify the Commission of these events.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses these notifications in order to effectively discharge its statutory duty to determine whether a particular ocean common carrier is a controlled carrier and therefore subject to the requirements of section 9 of the Shipping Act of 1984.

Frequency: The submission of notifications from controlled carriers is not assigned to a specific time frame by the Commission; they are submitted as circumstances warrant. The Commission only requires notification when a majority portion of an ocean common carrier becomes owned or controlled by a government, or when a controlled carrier newly begins operation in any United States trade.

Type of Respondents: Controlled carriers are ocean common carriers which are owned or controlled by a government.

Number of Annual Respondents: Although it is estimated that only 5 of the 8 currently classified controlled carriers may respond in any given year, because this is a rule of general applicability, the Commission considers the number of annual respondents to be 8. The FMC cannot anticipate when a new carrier may enter the trade; therefore, the number of annual respondents could increase to 10 or more at any time.

Estimated Time Per Response: The estimated time for compliance is 7 person-hours per year.

Total Annual Burden: The Commission estimates the person-hour burden required to make such notifications at 56 person-hours per year.

Title: 46 CFR Part 525—Marine Terminal Operator Schedules and Related Form FMC–1.

OMB Approval Number: 3072–0061 (Expires August 31, 2005).

Abstract: Section 8(f) of the Shipping Act of 1984, 46 U.S.C. app. 1707(f), provides that a marine terminal operator (MTO) may make available to the public a schedule of its rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal, subject to section 10(d)(1), 46 U.S.C. app. 1709(d)(1) of the Act. The Commission's rules governing MTO schedules are set forth at 46 CFR part 525.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to determine the organization name, organization number, home office address, name and telephone number of the firm's representatives and the location of MTO schedules of rates, regulations and practices, and publisher, should the MTOs determine to make their schedules available to the public, as set forth in section 8(f) of the Shipping Act.

Frequency: This information is collected prior to an MTO's commencement of its marine terminal operations.

Type of Respondents: Persons operating as MTOs.

Number of Annual Respondents: The Commission estimates the respondent universe at 247, of which 168 opt to make their schedules available to the public.

Estimated Time Per Response: The time per response for completing Form FMC–1 averages .5 person hours, and approximately 5 person-hours for related MTO schedules.

Total Annual Burden: The Commission estimates the total person-hour burden at 964 person-hours.

Title: 46 CFR Part 520—Carrier Automated Tariff Systems and Related Form FMC–1.

OMB Approval Number: 3072–0064 (Expires August 31, 2005).

Abstract: Except with respect to certain specified commodities, section 8(a) of the Shipping Act of 1984, 46 U.S.C. app. 1707(a), requires that each common carrier and conference shall keep open to public inspection, in an automated tariff system, tariffs showing its rates, charges, classifications, rules, and practices between all ports and points on its own route and on any through transportation route that has been established. In addition, individual carriers or agreements among carriers are required to make available in tariff format certain enumerated essential terms of their service contracts. 46 U.S.C. app. 1707(c). The Commission is responsible for reviewing the accessibility and accuracy of automated tariff systems, in accordance with its regulations set forth at 46 CFR part 520.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to ascertain the location of common carrier and conference tariff publications, and to access their provisions regarding rules, rates, charges and practices.

Frequency: This information is collected when common carriers or conferences publish tariffs.

Type of Respondents: Persons desiring to operate as common carriers or conferences.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 3,500.

Estimated Time Per Response: The time per response for completing Form FMC–1 averages .5 person hours, and approximately 5.6 person-hours for related tariff publication.

Total Annual Burden: The Commission estimates the total person-hour burden at 364,200 person-hours.

Title: 46 CFR Part 530—Service Contracts and Related Form FMC–83.

OMB Approval Number: 3072–0065 (Expires August 31, 2005).

Abstract: The Shipping Act of 1984, 46 U.S.C. app. 1707, requires service contracts, except those dealing with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, and their related amendments and notices to be filed confidentially with the Commission.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission monitors service contract filings for acts prohibited by the Shipping Act of 1984.

Frequency: The Commission has no control over how frequently service contracts are entered into; this is solely a matter between the negotiating parties. When parties enter into a service contract, it must be filed with the Commission.

Type of Respondents: Parties that enter into service contracts are ocean common carriers and agreements among ocean common carriers on the one hand, and shippers or shipper's associations on the other.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 140.

Estimated Time Per Response: The time per response for completing Form FMC–83 averages .5 person hours, and approximately 27 person-hours for reporting and recordkeeping requirements contained in the rules.

Total Annual Burden: The Commission estimates the total person-hour burden at 528,770 person-hours.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–14040 Filed 7–15–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *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 August 11, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. New York Private Bank & Trust and Emigrant Bancorp, both of New York, New York; to acquire 100 percent of the voting shares of Emigrant Savings Bank – Long Island, Westbury, New York; Emigrant Savings Bank – Brooklyn/Queens, Brooklyn, New York; Emigrant Savings Bank – Manhattan, New York, New York; and Emigrant Savings Bank – Bronx/Westchester, Bronx, New York, all *de novo* banks.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Eggemeyer Advisory Corp., WJR Corp., Castle Creek Capital LLC, Castle Creek Capital Partners Fund I, LP, Castle Creek Capital Partners Fund IIB, LP, and Castle Creek Capital Partners Fund IIb, LP all of Rancho Santa Fe, California; to indirectly acquire Heritage Financial Corporation, Granbury, Texas; and State National Bancshares, Inc., Fort Worth, Texas, to directly acquire 100 percent of Heritage Financial Corporation and thereby indirectly acquire its subsidiaries Heritage Associated Services, Inc., and Heritage National Bank, all of Granbury, Texas.

Board of Governors of the Federal Reserve System, July 12, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–14011 Filed 7–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 032 3144]

Cytodyne, LLC, Evergood Products Corp., and Melvin Rich; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 10, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Cytodyne, LLC, *et al.,* File No. 032 3144,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request,

Continued

requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Peter Miller (202) 326–2629 or Michael Ostheimer (202) 326–2699, Bureau of Consumer Protection, Room NJ–3223, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 13, 2005), on the World Wide Web, at *http://www.ftc.gov/os/2005/07/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Cytodyne, LLC, Evergood Products Corp., and Melvin Rich, individually and as a manager of Cytodyne, LLC and an officer of Evergood Products Corp. (together, ''respondents'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves practices relating to the advertising and promotion of Xenadrine EFX, a dietary supplement marketed for weight loss. According to the FTC complaint, respondents represented that Xenadrine EFX causes rapid and substantial weight and fat loss, causes permanent or long-term weight loss, and causes rapid and substantial weight loss without the need to diet or increase exercise. The complaint alleges that these claims are false and that the company failed to have substantiation for them. It further alleges that respondents falsely represented that scientific studies prove that Xenadrine EFX causes rapid and substantial weight loss and that it is more effective than leading ephedrine-based diet products. The FTC complaint also alleges that respondents falsely represented that persons appearing in Xenadrine EFX advertisements achieved the weight loss reported in those ads solely through the use of Xenadrine EFX. According to the FTC complaint, persons who appeared in the Xenadrine EFX advertisements engaged in rigorous diet and/or exercise programs in order to lose weight, and some were provided with a personal trainer. Finally, the complaint alleges that, in presenting testimonials for Xenadrine EFX by consumer endorsers who purportedly lost weight in the ordinary course of using Xenadrine EFX, respondents failed to disclose that the endorsers were paid from $1000 to $20,000 in connection with their endorsement, a fact that would be material to consumers in their decisions about purchasing or using the product.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future.

Part I of the order prohibits representations that Xenadrine EFX or any other product containing green tea extract, bitter orange, or caffeine causes rapid and substantial weight loss or fat loss. It also prohibits representations that any weight loss product causes rapid or substantial weight loss without the need to diet or increase exercise.

Part II prohibits respondents from representing that any weight loss product, dietary supplement, food, drug, or device causes weight or fat loss, causes permanent or long-term weight loss, or enables users to lose weight or fat without the need to diet or increase exercise unless the claim is true and respondents possess competent and reliable scientific evidence that substantiates the claim. It also prohibits respondents from making any other claims about the health benefits, performance, efficacy, safety, or side effects of any such product unless the claim is true and respondents possess competent and reliable scientific evidence that substantiates the claim.

Part III prohibits any misrepresentation of the existence, contents, validity, results, conclusions, or interpretations of any test or study in connection with the marketing or sale of any weight loss product, dietary supplement, food, drug, or device.

Part IV prohibits any misrepresentation that the experience described in any user testimonial for any weight loss product, dietary supplement, food, drug, or device represents the actual experience of the endorser as a result of using the product under the circumstances depicted in the endorsement.

Part V prohibits any representation about any endorser of any weight loss product, dietary supplement, food, drug, or device unless the respondents disclose any material connection that exists between the endorser and the respondents or any other person or entity involved in manufacturing, marketing, or selling the product.

Part VI of the proposed order allows the respondents to make any representations for any drug that are permitted in labeling for the drug under any tentative final or final Food and Drug Administration (''FDA'') standard or under any new drug application approved by the FDA.

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and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Part VII of the proposed order allows the respondents to make representations for any product that are specifically permitted in labeling for that product by regulations issued by the FDA under the Nutrition Labeling and Education Act of 1990.

Part VIII provides for the payment of $100,000 to the Commission.

Part IX requires respondents to cooperate in good faith with the Commission's reasonable requests for documents and testimony in connection with this action or any investigations related to or associated with the transactions or the occurrences that are the subject of the FTC complaint.

Part X requires respondents to send a letter to purchasers for resale of Xenadrine EFX notifying them of the Commission's order. It also provides that if respondents learn that any of its resellers or distributors are disseminating any advertisement or promotional material containing prohibited representations, they are required to request that the resellers or distributors stop making such representations and to stop doing business with resellers or distributors that do not comply with this request. Part XI requires respondents to keep copies of the communications required by Part X.

Parts XII through XVI require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of their personnel; to notify the Commission of changes in corporate structure (for the corporate respondents) and changes in employment (for the individual respondent) that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part XVII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–14082 Filed 7–15–05; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy; Cancellation of Standard Form by the Department of the Treasury

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The Department of the Treasury cancelled the following Standard Form:

SF 1034A, Public Voucher for Purchases and Services Other Than Personal.

This form is no longer required by Treasury.

DATES: Effective July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Renee Speed, Department of the Treasury, (202) 622–2784.

Dated: July 8, 2005.

Barbara M. Williams,

Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 05–14018 Filed 7–15–05; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fragile X Syndrome Cascade Testing and Genetic Counseling Protocols

Announcement Type: New.

Funding Opportunity Number: AA097.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates: Letter of Intent (LOI) Deadline: July 28, 2005.

Application Deadline: August 17, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301, 311 and 317(C) of the Public Health Service Act [42 U.S.C. 241, 243, and 247b–4 as amended].

Purpose: The purpose of the program is to develop and disseminate cascade testing and genetic counseling protocols for conditions related to changes in the Fragile X Mental Retardation 1 (FMR–1) gene, including Fragile X syndrome, Fragile X-associated Tremor/Ataxia Syndrome (FXTAS), and premature ovarian insufficiency and related fertility problems. This program addresses the ''Healthy People 2010'' focus area of Maternal, Infant and Child Health.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): Prevent birth defects and developmental disabilities, and improve the health and quality of life of Americans with disabilities.

This announcement is only for non-research activities supported by CDC. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities

- Using literature review and expert opinion, identify key issues related to cascade testing and genetic counseling for FMR–1 genetic testing.
- Develop protocols for cascade testing of family members of people identified with a mutation in the FMR–1 gene, including people with mental retardation or developmental delays, males with FXTAS, and females with premature ovarian insufficiency and related fertility problems.
- Develop protocols for genetic counseling to be used in conjunction with genetic testing for FMR–1 mutations. Protocols will include issues related to the likelihood of repeat allele expansion, impact of mosaicism, and prevalence of mental retardation and developmental delay among individuals with intermediate repeat alleles, premutations or full mutations.
- Ensure that the protocols address the key issues identified by literature review and expert opinion.
- Ensure that the protocols are appropriate for consumer needs and scientifically valid.
- Disseminate protocols to key stakeholders, including pediatricians, family practitioners, obstetricians, gynecologists, neurologists, nurses, clinical geneticists, genetic counselors, and parents.
- Develop a carefully designed and well-planned evaluation plan to monitor progress on activities and to assess the timeliness, completeness, and success of the project (applicants are encouraged to review the Morbidity and Mortality Weekly Report (MMWR) Recommendations and Reports ''Framework for Program Evaluation in Public Health'' September 17, 199/50 (RR13); 1–35 available at *http://www.cdc.gov/mmwr/PDF/RR/RR4811.pdf*). The plan should be based on a clear rational relating the activities within the cooperative agreement, projects goals, and evaluation measures. Applicants are encouraged to include evaluation plans for both outputs (for

example, number of practitioners reached) and outcomes (for example, changes in genetic testing practices).

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

- Assist recipients in monitoring program evaluation/performance, setting and meeting objectives, implementing methods, and complying with cooperative agreement requirements and other funding issues, through various methods including telephone consultation, site visits, and site visit reports.
- Assist recipients in developing and maintaining working relationships with stakeholder organizations.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the ''Activities'' Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $250,000 (This amount is an estimate, and is subject to availability of funds.).

Approximate Number of Awards: One.

Approximate Average Award: $250,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs.).

Floor of Award Range: $200,000.

Ceiling of Award Range: $300,000 (This ceiling is for the first 12-month budget period.).

Anticipated Award Date: August 31, 2005.

Budget Period Length: 12 months.

Project Period Length: One year.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Eligible applicants that can apply for this funding opportunity are listed below:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).
- Political subdivisions of States (in consultation with States).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If applying as a bona fide agent of a state or local government, a letter from the state or local government as documentation of the status is required. Place this documentation behind the first page of the application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

A successful applicant must be an organization with a national scope of operations.

If a funding amount greater than the ceiling of the award range is requested, the application will be considered non-responsive and will not be entered into the review process. The applicant will be notified that the application did not meet the submission requirements.

Special Requirements: If the application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review process. The applicant will be notified that the application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.
- Assistance will be provided only to a nationally-recognized, independent and objective source of credible information on genetic technologies and genetic policies for health care providers, genetics professionals, the public, media and policymakers.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission

CDC strongly encourages the applicant to submit the application electronically by utilizing the forms and instructions posted for this announcement on *http://www.Grants.gov*, the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper copy submission of all application forms.

Paper Submission

Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If access to the Internet is not available, or if there is difficulty accessing the forms on-line, contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700 and the application forms can be mailed.

IV.2. Content and Form of Submission

Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of the page
- Written in English, avoid jargon

Your LOI must contain the following information:

- Name
- Address
- Telephone number
- Principal Investigator
- Number and title of this program announcement
- Names of other key personnel
- Designations of collaborating institutions and entities
- Recruitment approach
- Expected Outcomes

Application: A project narrative must be submitted with the application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Double-spaced

- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

The narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- A demonstrated understanding of FMR–1 genetic testing and genetic counseling issues and the justification of the need for establishment cascade testing and genetic counseling protocols.
- A description of the goals and specific objectives of the project in time-framed, measurable terms.
- A detailed plan describing the approach to be taken in implementing the project and the methods by which the objectives will be achieved and evaluated, including their sequence. A comprehensive evaluation plan must be outlined.
- A description of the specific products to be developed and/or disseminated through the project.
- A description of the cooperative agreement's principal investigator's role and responsibilities.
- A description of all the project staff, regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the cooperative agreement.
- A detailed budget for the cooperative agreement. (Budget justification is not included in narrative page limit).

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curricula Vitas
- Letters of Support

The agency or organization is required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS 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.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm*. If the application form does not have a DUNS number field, please write the DUNS number at the top of the first page of the application, and/or include the DUNS number in the application cover letter.

Additional requirements that may require submittal of additional documentation with the application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: July 28, 2005.

CDC requests that an applicant send an LOI if the applicant intends to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, it will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: August 17, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

Applications may be submitted electronically at *http://www.grants.gov*. Applications completed on-line through Grants.gov are considered formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov*. Electronic applications will be considered as having met the deadline if the application has been submitted electronically by the applicant organization's Authorizing Official to Grants.gov on or before the deadline date and time.

If submittal of the application is done electronically through Grants.gov (*http://www.grants.gov*), the application will be electronically time/date stamped, which will serve as receipt of submission. Applicants will receive an e-mail notice of receipt when CDC receives the application.

If submittal of the application is by the United States Postal Service or commercial delivery service, the applicant must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives the submission after the closing date due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, the applicant will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

If a hard copy application is submitted, CDC will not notify the applicant upon receipt of the submission. If questions arise on the receipt of the application, the applicant should first contact the carrier. If the applicant still has questions, contact the PGO–TIM staff at (770) 488–2700. The applicant should wait two to three days after the submission deadline before calling. This will allow time for submissions to be processed and logged.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If the submission does not meet the deadline above, it will not be eligible for review, and will be discarded. The applicant will be notified the application did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.

If requesting indirect costs in the budget, a copy of the indirect cost rate agreement is required. If the indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

LOI Submission Address: Submit the LOI by express mail, delivery service, fax, or e-mail to: Michael Brown, Project Officer, Centers for Disease Control and Prevention (CDC), National Center on Birth Defects and Developmental Disabilities, Division of Human Development and Disability, 1600 Clifton Road NE., Mailstop E–88, Atlanta, GA 30333. Telephone: 404–498–3006. E-mail: *MABrown@cdc.gov*.

Application Submission Address: Electronic Submission: CDC strongly encourages applicants to submit applications electronically at *http://www.Grants.gov*. The application package can be downloaded from *http://www.Grants.gov*. Applicants are able to complete it off-line, and then upload and submit the application via the Grants.gov Web site. E-mail submissions will not be accepted. If the applicant has technical difficulties in

Grants.gov, costumer service can be reached by E-mail at *http://www.grants.gov/CustomerSupport* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

CDC recommends that submittal of the application to Grants.gov should be early to resolve any unanticipated difficulties prior to the deadline. Applicants may also submit a back-up paper submission of the application. Any such paper submission must be received in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. The paper submission must be clearly marked: ''BACK-UP FOR ELECTRONIC SUBMISSION.'' The paper submission must conform to all requirements for non-electronic submissions. If both electronic and back-up paper submissions are received by the deadline, the electronic version will be considered the official submission.

It is strongly recommended that the applicant submit the grant application using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If the applicant does not have access to Microsoft Office products, a PDF file may be submitted. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF may result in the file being unreadable by staff; or

Paper Submission

Applicant should submit the original and two hard copies of the application by mail or express delivery service to: Technical Information Management [RFA# AA097], CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The application will be evaluated against the following criteria:

1. *Applicant's Understanding of the Problem (25%).* The extent to which the applicant demonstrates an understanding of the FMR–1 genetic testing and genetic counseling issues and the need to establish cascade testing and genetic counseling protocols.

2. *Goals and Objectives (25%).* The extent to which the project goals are clearly stated and the objectives are specific, measurable, and time-phased. Also, the extent to which a plan is presented for evaluating the objectives.

3. *Plan of Operation (25%).* The extent to which the applicant has provided a full and comprehensive description of the project they propose to undertake and a plan for how it will be accomplished. The applicant must also describe the methods by which the objectives will be achieved and evaluated.

4. *Capacity to Conduct Project Activities and Begin Project Operations in a Timely Fashion (25%).* The extent to which the applicant has provided information to support its ability to conduct the activities of the cooperative agreement, including documentation of previous relevant experience; documentation of institutional support for the project; demonstrated ability to identify qualified personnel to fill key positions and begin project activities in a timely fashion; and the ability to identify adequate office space for the project. The extent to which the organization demonstrates that it is a nationally-recognized, independent and objective source of credible information on genetic technologies and genetic policies for health care providers, genetics professionals, the public, media and policymakers.

5. *Budget Justification and Adequacy of Facilities (not scored).* The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center on Birth Defects and Developmental Disabilities (NCBDDD). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. The objective review process will follow the policy requirements as stated in the GPD 2.04 [*http://198.102.218.46/doc/gpd204.doc*]. The objective review panel will consist of CDC employees outside of the funding division who will be randomly assigned applications to review and score. Applications will be funded in order by score and rank determined by a review panel. CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

Anticipated Announcement date is August 31, 2005 for a September 30, 2005 project start date.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and CDC. The NoA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

Successful applicants must comply with the administrative requirements outlined in 45 CFR Part 74 and Part 92 as Appropriate. The following additional requirements apply to this project:

- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

An additional Certifications form from the PHS5161–1 application needs to be included in the Grants.gov electronic submission only. Applicants should refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf.* Once the applicant has filled out the form, it should be attached

to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

The applicant must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact:

Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For program technical assistance, contact: Michael Brown, Project Officer, Centers for Disease Control and Prevention (CDC), National Center on Birth Defects and Developmental Disabilities, Division of Human Development and Disability, 1600 Clifton Road NE., Mailstop E–88, Atlanta, GA 30333. Telephone: 404–498–3006. E-mail: *MABrown@cdc.gov*.

For financial, grants management, or budget assistance, contact: Nealean Austin, Grants Management Officer, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: (770) 488–2722. E-mail: *nea1@cdc.gov*.

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: July 11, 2005.

Alan Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–14049 Filed 7–15–05; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics, Board of Scientific Counselors

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following committee meeting.

Name: Board of Scientific Counselors (BSC), National Center for Health Statistics.

Times and Dates: 2 p.m.–5:30 p.m., September 15, 2005; 8:30 a.m.–2 p.m., September 16, 2005.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary; the Director, CDC; and Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters To Be Discussed: The agenda will include welcome remarks by the Director, NCHS; introductions of members and key NCHS staff; scientific presentations and discussions; and an open session for comments from the public. Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, August 26, 2005. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, August 26, 2005.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Robert Weinzimer, Executive Secretary, NCHS, 3311 Toledo Road, Room 7108, Hyattsville, Maryland 20782, telephone (301) 458–4565, fax (301) 458–4021.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 11, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–14048 Filed 7–15–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Issuance of Final Policy Directive

AGENCY: Administration for Native Americans (ANA), HHS.

SUMMARY: The Administration for Native Americans (ANA) herein issues final interpretive rules, general statement of policy, and rules of agency procedure or practice in relation to the Social and Economic Development Strategies (SEDS) project SMART NA Communities (Strengthening Marriages and Relationships in Tribal and Native American Communities). For FY 2005, ANA reserved an amount of funding under the SEDS program to fund projects that are beneficial to the development of healthy Native American communities. ANA has decided to participate in ACF's Healthy Marriage Initiative, and intends to use the reserved SEDS funds to support projects that improve child well-being by removing barriers associated with forming and retaining healthy families and marriages in Native American communities. Under the statute, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules, statements of general policy, and rules of agency procedure or practice, and to give notice of the final adoption of such changes at least 30 days before the changes become effective. The notice also provides additional information about ANA's plan for administering the programs.

DATES: June 28, 2005.

FOR FURTHER INFORMATION CONTACT: Sheila Cooper, Director of Program Operations, at (877) 922–9262.

SUPPLEMENTARY INFORMATION: Pursuant to Section 814 of the Native American Programs Act of 1974 (the Act), as amended, ANA is required to provide notice of its proposed interpretive rules, statements of policy and rules of agency organization, procedure or practice. The Administration for Native Americans published a Notice of Public Comment (NOPC) on May 27, 2005 (70 FR 30755), on proposed ANA policy and program

clarifications, modifications and activities for the FY 2005 SEDS–SMART NA program announcement. The NOPC closed June 27, 2005. ANA did not receive any public comments on the NOPC, and this notice shall suffice as ANA's final policy.

Additional Information

Final Policies and Procedures

1. General

This SEDS SMART NA Communities program area incorporates a majority of the requirements as contained in the SEDS program announcement. There are a few instances where ANA has opted to change the request for information for this program area only. The differences are noted below.

2. Evaluation Criteria

The Impact Indicators, as established in the FY 2005 SEDS program announcement under ANA Evaluation Criteria Five, will be used for this program area except for the following: (2) Number of codes or ordinances developed and implemented; (3) number of people to successfully complete a workshop/training; (8) number of community-based small businesses established or expanded; (9) identification of Tribal or Village government business, industry, energy or financial codes or ordinances that were adopted or enacted; and (10) number of micro-businesses started. ANA does not believe that the capture of this data will affect the impact or demonstrate the success of the grants. The number of suggested ANA Impact Indicators has been reduced to five indicators. (Legal authority: Section 803(a) of the Native American Programs Act of 1974, 42 U.S.C. 2991b)

3. ANA Funding Restrictions

ANA will use the Funding Restrictions established under the FY 2005 SEDS program announcement, except for the following: Core Administration has been modified to remove the last sentence, ''Under Alaska SEDS projects, ANA will consider funding core administrative capacity building projects at the Village government level if the Village does not have governing systems in place.'' and the sentence, ''Projects that do not further the three interrelated ANA goals of economic development, social development and governance or meet the purpose of this program announcement.'' This program area is not associated with the Alaska SEDS program area nor is it intended to interrelate to the goals of economic development, social development or governance. (Legal authority: Section 803(a) of the Native American Programs Act of 1974, 42 U.S.C. 2991b)

4. Administrative Policies

ANA will be using the administrative policies as included in the FY 2005 SEDS program announcement except: ''An applicant can have only one active ANA SEDS grant operating at any given time'' and ''Applicants proposing an Economic Development project must address the project's viability. A business plan, if applicable, must be included to describe the project's feasibility, cash flow and approach for the implementation and marketing of the business.'' Neither of these policies applies to this program. Special initiative awards such as this program will be issued a SEDS grant number and therefore an entity will be able to administer a regular SEDS award in addition to this project. Business development and the promotion of economic development are not components of this demonstration. (Legal authority: Section 803(a) of the Native American Programs Act of 1974, 45 U.S.C. 2991b)

5. Funding Thresholds

The funding threshold for this program area will be $50,000 (floor amount) to $150,000 (ceiling amount) per budget period. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be considered for funding under this announcement. (Legal authority: Section 803(a) of the Native American Programs Act of 1974, 42 U.S.C. 2991b)

Technical Correction

Upon general review of the Notice, the phrase ''demonstration project'' has been replaced with the text ''program area''. The reference to demonstration projects was inadvertently placed in the text. Upon general review, the legal authority was clarified to reflect that specific section of the authority under which this program area will be funded.

Dated: June 28, 2005.

Quanah Crossland Stamps,

Commissioner, Administration for Native Americans.

[FR Doc. 05–14025 Filed 7–15–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Assessment for Sacramento, Delevan, Colusa and Sutter National Wildlife Refuges, Glenn, Colusa, and Sutter Counties, CA

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) document for Sacramento, Delevan, Colusa, and Sutter National Wildlife Refuges (NWRs) which are part of the Sacramento NWR Complex (NWRC). This notice advises the public that the Service intends to gather information necessary to prepare a CCP and an EA pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and the National Environmental Policy Act (NEPA). The public is invited to participate in the planning process. The Service is furnishing this notice in compliance with the Service's CCP policy to:

1. Advise other agencies and the public of our intentions;

2. Obtain suggestions and information on the scope of issues to include in the environmental documents; and

The Service will solicit information from the public via open houses, meetings, and written comments. Special mailings, newspaper articles, and announcements will provide information regarding opportunities for public involvement in the planning process.

DATES: Please provide written comments to the address below by September 1, 2005.

ADDRESSES: Address comments, questions, and requests for further information to: Jackie Ferrier, Refuge Planner, Sacramento National Wildlife Refuge Complex, 752 County Road 99 W, Willows, California 95988. You may find additional information concerning the refuges at the Sacramento NWRC Internet site *http://www.sacramentovalleyrefuges@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Jackie Ferrier, Refuge Planner, Sacramento National Wildlife Refuge Complex, 752 County Road 99 W, Willows, California 95988; telephone (530) 934–2801; fax (530) 934–7814.

SUPPLEMENTARY INFORMATION: By Federal law (National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (Administration Act) (16 U.S.C. 668dd–668ee)), the Service is to manage all lands within the National Wildlife Refuge System in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements, including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input into the planning process is essential.

The CCP will provide other agencies and the public with information regarding the future desired conditions for the refuges and how the Service will implement management strategies. The Service will prepare an EA in accordance with procedures for implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Sacramento NWRC consists of five NWRs and three wildlife management areas. This CCP will include Sacramento, Delevan, Colusa, and Sutter NWRs. The NWRC provides more than 24,000 acres of wetland and upland habitat critical to flyway and continental waterfowl populations. About forty percent of Pacific Flyway waterfowl populations winter in the Sacramento Valley. The vast majority of wetlands in the Sacramento Valley have been converted to agricultural, industrial, and urban development. Remaining wetlands are intensively managed to optimize wildlife benefits.

Comments received will be used to help identify key issues and to develop Refuge goals, habitat management and visitor services strategies. Additional opportunities for public participation will occur throughout the planning process, which is expected to be completed in 2008. Data collection has been initiated to create computerized mapping, including vegetation, topography, habitat types and existing land uses. The outcome of this planning process will be a CCP to guide refuge management for the next 15 years. We have estimated that a draft CCP and EA will be made available for public review in 2007.

Dated: July 12, 2005.

Ken McDermond,

Acting Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 05–14046 Filed 7–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for Sherburne National Wildlife Refuge, Sherburne County, MN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service announces that the Draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Sherburne NWR, Minnesota.

The CCP was prepared 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. Goals and objectives in the CCP describe how the agency intends to manage the refuge over the next 15 years.

DATES: Comments on the Draft CCP/EA must be received on or before September 2, 2005.

ADDRESSES: Copies of the Draft CCP are available on compact disk or hard copy, you may obtain a copy by writing to: U.S. Fish and Wildlife Service, Division of Conservation Planning, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111 or you may access and download a copy via the planning Web site at *http://www.fws.gov/midwest/planning/sherburne/index.html*.

All comments should be addressed to Sherburne National Wildlife Refuge, Attention: CCP Comment, 17076 293rd Avenue, Zimmerman, MN 55398, or direct e-mail to *r3planning@fws.gov*. Comments may also be submitted through the Service's regional Web site at *http://www.fws.gov/midwest/planning/*.

FOR FURTHER INFORMATION CONTACT: Anne Sittauer at (763) 389–3323 extension 11.

SUPPLEMENTARY INFORMATION: The 30,575-acre Sherburne National Wildlife is located in central Minnesota at the juncture of the northern boreal forest, the eastern deciduous forest, and the tallgrass prairie. It was established in 1965 under the general authority of the Migratory Bird Conservation Act of 1929 (16 U.S.C. 715d). The Act states that lands may be acquired ''* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds.'' The Refuge attracts over 230 species of birds each year to its diverse habitats. Of these, over 120 are known to nest in the area. The Refuge wetlands provide habitat for about 30 nesting pairs of Greater Sandhill Cranes and serve as a staging area for thousands of cranes during fall migration. During fall and spring migration, the Refuge wetlands also support thousands of waterfowl.

The EA evaluates five different approaches, or alternatives, to future management of the Sherburne NWR. The plan also identifies wildlife-dependent recreational opportunities available to the public including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. The preferred alternative calls for: (1) Changes in the water impoundment system and upland management to create a diversity of wetland types and historic upland plant communities; (2) increased opportunities for all types of wildlife-dependent recreation; and (3) outreach, private lands, and partnership activities that will emphasize natural processes, including native habitat restoration and conservation, to form ecologically functioning connections to and from the Refuge.

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 *et seq.*) requires the Service to develop a CCP for each National Wildlife Refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction for conserving wildlife and their habitats, the CCP identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with 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 (42 U.S.C. 4321–4370d).

Dated: February 25, 2005.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Ft. Snelling, Minnesota.

[FR Doc. 05–14047 Filed 7–15–05; 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 for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal of a currently approved information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs has submitted to the Office of Management and Budget a request for approval and renewal of information collections, OMB Control No. 1076–0017, Financial Assistance and Social Service Program application form 5–6601.

DATES: Written comments must be submitted on or before August 17, 2005.

ADDRESSES: Written comments may be sent to the Desk Officer for the Department of the Interior, Office of Management and Budget, Office of Regulatory Affairs via facsimile to 202–395–6566, or by e-mail to *OIRA_Docket@omb.eop.gov.*

Send a copy of your comments to Larry Blair, Office of Tribal Services, Bureau of Indian Affairs, Department of Interior, 1951 Constitution Avenue, NW., Mail Stop 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons can obtain additional information regarding collection requests with no additional charge by contacting Larry Blair, 202–513–7621. Facsimile number (202) 208–2648.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs needs the information collected to make determinations of eligibility for the BIA's social service (financial assistance) programs: General Assistance, Child Welfare Assistance, Miscellaneous Assistance, and services only (no cash assistance). Funding of these programs is authorized by 25 U.S.C. 13.

A 60-day notice for public comments was published in the **Federal Register** on March 3, 2005 (70 FR 10407). No comments were received regarding this form.

II. Request for Comments

The Department of the Interior invites comments being sent to OMB on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

(b) The accuracy of the BIA'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.

An agency may not conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number.

Burden means the total time 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; to develop, acquire, install and utilize technology and systems for the purpose of collection, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources to complete and review the collection of information; and to transmit or otherwise disclose the information.

III. Data

Title of the collection of information: Financial Assistance and Social Service Programs, 25 CFR 20.

OMB Number: 1076–0017.

Expiration Date: July 31, 2005.

Type of Review: Extension of a currently approved collection. The information is submitted to obtain or retain benefits and for case management/case planning purposes.

Affected Entities: Individual members of Indian tribes who are living on a reservation or within a tribal service area.

Frequency of responses: One application per year.

Estimated Number of Annual Responses: 200,000.

Estimated Total Annual Burden Hours: 200,000 × 15 min. = 50,000 hours.

Dated: June 13, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–14019 Filed 7–15–05; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–PH; GP5–0170]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

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

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management Eastern Washington Resource Advisory Council will meet as indicated below.

DATES: The Eastern Washington Resource Advisory Council will meet for a field trip on August 5, 2005, starting from the Spokane District Office, Bureau of Land Management, 1103 North Fancher Road, Spokane, WA 99212–1275.

SUPPLEMENTARY INFORMATION: The RAC meeting will convene at the Spokane District Office, with a 30-minute public input time scheduled to commence at 8 a.m., contingent on public in attendance at that time. Following any public input, the RAC will address agenda items, to include Spokane District Program Priorities. The remainder of the meeting will be a field tour to public lands in the Packer Creek wetland restoration area in Whitman County. The RAC members will depart from the Spokane BLM office about 9:30 and return about 5 p.m. Information to be distributed to Council members for their review should be submitted, in writing, to the Spokane district office prior to July 29, 2005.

FOR FURTHER INFORMATION CONTACT: Sandra Gourdin or Kathy Helm, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212, or call (509) 536–1200.

Dated July 12, 2005.

A. Barron Bail,

Acting District Manager.

[FR Doc. 05–14039 Filed 7–15–05; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–05–1310–EJ]

Notice of Public Meetings, Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management.

ACTION: Notice of public meetings.

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) Northwest Colorado Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Northwest Colorado RAC is holding a special meeting on Friday, July 29, 2005. This meeting is being held via conference call, and will begin at 12 p.m. m.t. and adjourn by 1:30 p.m. m.t. A public comment period is scheduled for 12:30 p.m. m.t.

ADDRESSES: This Northwest Colorado RAC meeting will be held via conference call. Any public interested in participating in the call must contact Melodie Lloyd at 970–244–3097 by Thursday, July 28, 12 p.m. m.t. to reserve a line.

FOR FURTHER INFORMATION CONTACT: Jamie Connell, BLM Glenwood Springs Field Manager, 50629 Hwy. 6&24, Glenwood Springs, CO; telephone 970–947–2800; or Melodie Lloyd, Public Affairs Specialist, 2815 H Rd., Grand Junction, CO, telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Northwest Colorado RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of public land issues in Colorado.

The purpose of the July 29, 2005 conference call meeting is to discuss the BLM White River Field Office West Douglas Herd Area Amendment to the White River Resource Management Plan, for the purpose of offering guidance and advice to the BLM. This conference call meeting is open to the public. The public may present written comments to the RAC. This conference call meeting will also have time, as identified above, 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.

Dated: July 13, 2005.

John Ruhs,

Kremmling Field Manager and Designated Federal Officer for the Northwest, Colorado RAC.

[FR Doc. 05–14151 Filed 7–14–05; 11:59 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0067 and 1029–0083

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR 705 and the Form OSM–23, Restriction on financial interests of State employees; and 30 CFR part 955 and the Form OSM–74, Certification of Blasters in Federal program States and on Indian lands, have been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection packages were previously approved and assigned clearance numbers 1029–0067 for 30 CFR part 705 and the OSM–23 form, and 1029–0083 for 30 CFR part 955 and OSM–74 form. This notice describes the nature of the information collection activities and the expected burdens and costs.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by August 17, 2005, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: OBM regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted requests to OMB to renew its approval for the collections of information for 30 CFR 705 and the Form OSM–23, Restriction on financial interests of State employees; and 30 CFR 955 and the Form OSM–74, Certification of Blasters in Federal program States and on Indian lands. OSM is requesting a 3-year term of approval for these information collection activities.

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 these collections of information are on the form OSM–23 and in 30 CFR 705.10, which is 1029–0067; and on the form OSM–74 and in 30 CFR 955.10, which is 1029–0083.

As required under 5 CFR 1320.8(d), **Federal Register** notices soliciting comments on 30 CFR 705 and 30 CFR 955 were published on March 10, 2005 (70 FR 12017), and March 23, 2005 (70 FR 14712), respectively. No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Restrictions on financial interests of State employees, 30 CFR 705.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on employees of regulatory authorities having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any State regulatory authority employee or member of advisory boards or commissions established in accordance with State law or regulation to represent

multiple interests who performs any function or duty under the Surface Mining Control and Reclamation Act.

Total Annual Responses: 3,676.

Total Annual Burden Hours: 1,078.

Title: Certification of blasters in Federal program States and on Indian lands—30 CFR 955.

OMB Control Number: 1029–0083.

Summary: This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant. The affected public will be blasters who want to be certified by the Office of Surface Mining Reclamation and Enforcement to conduct blasting on Indian lands or in Federal primary States.

Bureau Form Number: OSM–74.

Frequency Collection: On occasion.

Description of Respondents: Individuals intent on being certified as blasters in Federal program States and on Indian lands.

Total Annual Responses: 29.

Total Annual Burden Hours: 76.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence, 1029–0067 for Part 705 and the OSM–23 form; and 1029–0083 for Part 955 and the OSM–74 form.

Dated: May 25, 2005.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 05–14042 Filed 7–15–05; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–523]

In the Matter of Certain Optical Disk Controller Chips and Chipsets and Products Containing the Same, Including DVD Players and PC Optical Storage Devices II; Notice of Commission Decision Not To Review an Initial Determination Extending the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') extending the target date for completion of the of the above-captioned investigation until January 30, 2006.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on Aug. 31, 2004, based on a complaint filed by Media Tek, Inc., of Hsin-Chu City, Taiwan. 69 FR 53098 (Aug. 31, 2004). The complainant alleged violations of section 337 in the importation and sale of certain optical disk controller chips and chipsets and products containing the same, including DVD players and PC optical storage devices by reason of infringement of certain claims of U.S. Patent Nos. 5,970,031; 6,229,773; 6,170,043.

On June 21, 2005, the ALJ issued an ID (Order No. 74) extending the target date of the investigation by two months, *i.e.*, until January 30, 2006. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 13, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–14044 Filed 7–15–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investiagation Nos. 701–TA–381–382 and 731–TA–797–804 (Review)]

Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom

Determinations

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 countervailing duty orders on stainless steel sheet and strip from Italy and Korea and that revocation of the antidumping duty orders on stainless steel sheet and strip from Germany, Italy, Japan, Korea, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission further determines, pursuant to section 751(c) of the Act, that revocation of the antidumping duty orders on stainless steel sheet and strip from France and the United Kingdom 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.[3]

Background

The Commission instituted these reviews on June 1, 2004 (69 FR 3958), and determined on September 7, 2004, that it would conduct full reviews (69 FR 56460, September 21, 2004). Notice of the scheduling of the Commission's reviews and of a public hearing 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 September 21, 2004 (69 FR 56460). The hearing was held in Washington, DC, on April 26, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun and Commissioner Daniel R. Pearson dissenting.

[3] Chairman Stephen Koplan and Commissioner Charlotte R. Lane dissenting.

Secretary of Commerce on July 12, 2005. The views of the Commission are contained in USITC Publication 3788 (July 2005), entitled Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, Korea, Mexico, Taiwan, and the United Kingdom: Investigations Nos. 701–TA–381–382 and 731–TA–797–804 (Review).

By order of the Commission.

Dated: Issued July 12, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–14045 Filed 7–15–05; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Civil Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: claims under the Radiation Exposure Compensation Act.

The Department of Justice (DOJ), Civil Division, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 70, Number 76, page 20771 on April 21, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 17, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Claims under the Radiation Exposure Compensation Act.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: CIV–RECA–1. Civil Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. *Abstract:* Information is collected to determine whether an individual is entitled to compensation under Radiation Exposure Compensation Act Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 3,000 respondents who will each require 2.5 hours to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 7,500 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 13, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–14041 Filed 7–15–05; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on June 29, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. 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, Petrobras/Cenpes, Rio de Janeiro, BRAZIL has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, PERF 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 March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on May 10, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2005 (70 FR 34151).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–14030 Filed 7–15–05; 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—Southwest Research Institute: Validation of Methodology for Assessing Defect Tolerance of Welded Reeled Risers

Notice is hereby given that, on June 28, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI''): Validation of Methodology for Assessing Defect

Tolerance of Welded Reeled Risers has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstance. Specifically, Technip Offshore UK Limited, Aberdeen, Scotland, United Kingdom; Tenaris Connections AG, Vaduz, Liechtenstein; and Total E&P Services, LaDefense, FRANCE have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SwRI: Validation of Methodology for Assessing Defect Tolerance of Welded Reeled Risers intends to file additional written notification disclosing all changes in membership.

On August 12, 2004, SwRI: Validation of Methodology for Assessing Defect Tolerance of Welded Reeled Risers 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 September 7, 2004 (69 FR 54155).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–14031 Filed 7–15–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Communications Assistance for Law Enforcement Act (CALEA) Readiness Survey.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 70, Number 70, page 19503 on April 13, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 17, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies 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.

Overview of this Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Communications Assistance for Law Enforcement Act (CALEA) Readiness Survey

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Federal Bureau of Investigation.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for profit. Other: Federal Government, State, local, or tribal government. The information collected in the survey will be stored in a database and be used to evaluate the effectiveness of CIU programs for implementing CALEA solutions in the Public Switched Telephone Network (PSTN). Affected Telecommunications Service Providers (TSP) will be asked to identify the platforms within their networks that have CALEA responsibility. For each identified platform the TSP must specify if it is CALEA ready (Law Enforcement can obtain a CALEA surveillance). If the platform is not CALEA ready, the TSP is asked to identify the software release that provides CALEA functionality and the date when the platform anticipate installing that software release.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3483 TSPs will provide 21,323 responses. Each response is estimated to take 15 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,330.75 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 13, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–14043 Filed 7–15–05; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: GovBenefits Office, U.S. Department of Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed the proposed continued collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3506C(2)(A)]. This program helps to ensure that requested data can

be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Comments are to be submitted by September 16, 2005.

ADDRESSES: A copy of the ICR and supporting documentation as submitted to the Office of Management and Budget (OMB) can be obtained by contacting the Department of Labor. To obtain copies, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.* Send comments regarding this proposed collection of information, including suggestions for reducing the burden to the U.S. Department of Labor, GovBenefits Office, FPB, Room N–4309, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

The President's Management Agenda for E-Government (February 27, 2002) sets forth a strategy for simplifying the delivery of services to citizens. The President's agenda outlines a Federal E-Government Enterprise Architecture that will transition the management and delivery of government services from a bureaucracy-centered to a citizen-centered paradigm. To this end, the Department of Labor serves as the managing partner of the Administration's ''GovBenefits'' strategy for assisting citizens in identifying and locating information on benefits sponsored by the Federal government and State governments. This tool will greatly reduce the burden on citizens attempting to locate services available from many different government agencies by providing one-stop access to information on obtaining those services.

Respondents answer a series of questions to the extent necessary for locating relevant information on Federal benefits. Responses are used by the respondent to expedite the identification and retrieval of sought after information and resources pertaining to the benefits sponsored by the Federal Government.

II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

OMB approval for this collection of information is currently scheduled to expire on December 31, 2005. This notice requests extended approval from OMB for the collection of information required for locating information on the GovBenefits web site.

Type of Review: Extension of a currently approved collection.

Agency: Office of the Secretary.

Title: Information Collection Plan for GovBenefits.

OMB Number: 1290–0003.

Affected Public: Individuals or households; Not-for-profit institutions.

Frequency: On occasion.

Number of Respondents: 6,367,428.

Number of Responses: 6,367,428.

Average Time per Response: 2 minutes

Estimated Burden Hours: 191,023 hours

Total Annualized Capital/startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the agency's request for OMB approval of the information collection request. Comments will become a matter of public record.

Dated: June 28, 2005.

Cesar Deguzman,

Department of Labor, GovBenefits Project Manager.

[FR Doc. 05–14022 Filed 7–15–05; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year.

The terms of five members of the Council expire on November 14, 2005. The groups or fields they represent are as follows: (1) Employee organizations; (2) employers; (3) corporate trust; (4) the investment management profession; and (5) the general public. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Larry Good, ERISA

Advisory Council Executive Secretary, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5623, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 1, 2005. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization. Recommendations should include the position for which the nominees are recommended and the nominees' contact information.

Signed at Washington, DC this 11th day of July, 2005.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 05–14021 Filed 7–15–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the ''Current Population Survey (CPS) Disability Questions Test,'' to be conducted in February 2006. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before September 16, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number (202) 691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number (202) 691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The February 2006 CPS Disability Questions Test will be conducted by the Bureau of Labor Statistics (BLS). The Test will gather information on the disability status of CPS respondents. The BLS will use the data to assess the effectiveness of new questions designed to identify persons with disabilities within the context of the CPS. Additionally, the BLS will be able to evaluate the effect that adding these questions to the CPS on a monthly basis will have on that survey's response rates. Other groups who may find these data to be of interest include veterans groups, educational associations, and disability advocacy groups.

Because the Disability Questions Test is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the Test. Data concerning disabled persons will be possible across characteristics such as sex, race, age, and educational attainment of the respondent.

II. Current Action

Office of Management and Budget clearance is being sought for the CPS Disability Questions Test.

Type of Review: New collection.

Agency: Bureau of Labor Statistics.

Title: CPS Disability Questions Test.

OMB Number: 1220–NEW.

Affected Public: Households.

Total Respondents: 22,500.

Frequency: Once.

Total Responses: 43,500.

Average Time per Respondent: 2 minutes.

Estimated Total Burden Hours: 750 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 12th day of July, 2005.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 05–14023 Filed 7–15–05; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans Employment and Training; President's National Hire Veterans Committee; Notice of Open Meeting

The President's National Hire Veterans Committee was established under 38 U.S.C. 4100 Public Law 107–288, Jobs for Veterans Act, to furnish information to employers with respect to the training and skills of veterans and disabled veterans, and to the advantages afforded employers by hiring veterans with training and skills and to facilitate the employment of veterans and disabled veterans through participation in Career One Stop National Labor Exchange, and other means.

The President's National Hire Veterans Committee will meet on Tuesday, August 9, 2005 beginning at 1 p.m. at the Fairmount Chicago, Moulin Rouge Room, 200 N. Columbus Drive, Chicago, Illinois.

The committee will discuss raising corporate awareness to the advantages of hiring veterans.

Individuals needing special accommodations should notify Bill Offutt at (202) 693–4717 by August 2, 2005.

Signed in Washington, DC, this 8th of July, 2005.

Charles S. Ciccolella,

Acting Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 05–14024 Filed 7–15–05; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, July 21, 2005.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Reprogramming of NCUA's Operating Budget for 2005.
3. Proposed Rule: Part 796 of NCUA's Rules and Regulations, Post-Employment Restrictions for Certain NCUA Examiners.
4. Proposed Rule: Section 741.8 of NCUA's Rules and Regulations, Purchase of Assets and Assumption of Liabilities; and Request for Comments: Section 741.3 of NCUA's Rules and Regulations, Nonconforming Investments.
5. Proposed Rule: Section 701.34 of NCUA's Rules and Regulations, Uninsured Secondary Capital Accounts.
6. Proposed Rule: Part 742 of NCUA's Rules and Regulations, Regulatory Flexibility Program.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Secretary of the Board.

[FR Doc. 05–14192 Filed 7–14–05; 2:18 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for Exemption From Certain NRC Licensing Requirements for Special Nuclear Material for Envirocare of Utah, Inc.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: James Park, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–5835; fax number: (301) 415–5397; e-mail: *jrp@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order pursuant to section 274f of the Atomic Energy Act that would modify an existing Order for Envirocare of Utah, Inc. (Envirocare). The existing order exempts Envirocare from certain NRC regulations and permits Envirocare, under specified conditions, to possess waste containing special nuclear material (SNM), in greater quantities than those specified in 10 CFR part 150, at Envirocare's low-level waste (LLW) disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. The NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The modified Order will be issued following the publication of this notice.

II. Environmental Assessment

Background

The NRC is considering issuance of an Order pursuant to section 274f of the Atomic Energy Act that would modify an existing Order for Envirocare. The existing order exempts Envirocare from certain NRC regulations and permits Envirocare, under specified conditions, to possess waste containing SNM, in greater quantities than those specified in 10 CFR part 150, at Envirocare's LLW disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. Published in the **Federal Register** on May 21, 1999 (64 FR 27826), the original Order was modified subsequently on January 30, 2003, at the request of Envirocare and published in the **Federal Register** on February 13, 2003 (68 FR 7399).

Envirocare is licensed by the State of Utah, an NRC Agreement State, under a 10 CFR part 61 equivalent license for the disposal of LLW. Envirocare also is licensed by Utah to dispose of mixed waste, hazardous waste, and 11e.(2) byproduct material (as defined under section 11e.(2) of the Atomic Energy Act of 1954, as amended).

By letter dated July 8, 2003, Envirocare proposed that the NRC amend the January 30, 2003, Order. The NRC staff has evaluated this request in two phases. In the first phase, the NRC staff evaluated the following requested revisions: (1) Modify the table in Condition 1 to include limits for uranium and plutonium in waste without magnesium oxide; (2) modify the units of the table from picocuries of SNM per gram of waste material to gram of SNM per gram of waste material; and (3) revise the language of Condition 5 to be consistent with the revised units in the table in Condition 1. The NRC staff approved these revisions and published a modified Order in the **Federal Register** on December 29, 2003 (68 FR 74986). In the second phase, which is the subject of this EA, the NRC staff has evaluated the remaining revisions requested by Envirocare (the proposed action).

Review Scope

The purpose of this EA is to assess the environmental impacts of Envirocare's requested modification to its December 2003 Order. This EA does not approve or deny the requested action. A separate Safety Evaluation Report (SER) also will be issued in support of the approval or denial of the requested action. This EA will determine whether to issue or prepare an Environmental Impact Statement (EIS). Should the NRC issue a FONSI, no EIS will be prepared.

Proposed Action

Envirocare proposes that the NRC amend the December 29, 2003, Order to: (1) Modify the table in Condition 1 to include criticality-based limits for uranium-233 and plutonium isotopes in waste containing up to 20 percent of materials listed in Condition 2 (*e.g.*, magnesium oxide); (2) include criticality-based limits in the table in Condition 1 for plutonium isotopes in waste with unlimited materials in Condition 2, and in waste with unlimited quantities of materials in Conditions 2 and 3 (*e.g.*, beryllium); (3) provide criticality-based limits for uranium-235 as a function of enrichment in waste containing up to 20 percent of materials listed in Condition 2 and in waste containing none of the materials listed in Condition 2; and (4) include additional mixed waste treatment technologies.

Need for the Proposed Action

In its July 8, 2003, request, Envirocare states that it is currently at a competitive disadvantage with another waste disposal company. Envirocare would like to expand its capabilities to

accept additional waste streams and treat waste using additional technologies. In order to do so, Conditions 1 and 5 of the Order would need to be revised.

Alternatives to the Proposed Action

The only alternative to the proposed action that the NRC staff considered was the no-action alternative. Under the no-action alternative, the Order would not be revised.

Affected Environment

The NRC staff has prepared an environmental impact statement (EIS) (NUREG–1476; August 1993), EAs, and SERs for its previous actions. The affected environment for the Envirocare site is described in detail in NUREG–1476.

Environmental Impacts of the Alternatives

No-Action Alternative: For the no-action alternative, the environmental impacts would be the same as those evaluated in the EAs that support the May 21, 1999, Order (64 FR 26463, May 14, 1999), the January 30, 2003, modification of the Order (68 FR 3281, January 23, 2003), and the December 29, 2003, modification of the Order (68 FR 59645, October 16, 2003). The regulations regarding SNM possession in 10 CFR part 150 set mass limits whereby a licensee is exempted from the licensing requirements of 10 CFR part 70 and can be regulated by an Agreement State. The licensing requirements in 10 CFR part 70 apply to persons possessing greater than critical mass quantities (as defined in 10 CFR 150.11). The principal emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The NRC staff considers that criticality safety can be maintained by relying on concentration limits, under the specified conditions. These concentration limits are considered an alternative definition of quantities not sufficient to form a critical mass to the weight limits in 10 CFR 150.11, thereby assuring the same level of protection. The 1999 and the two 2003 EAs concluded that issuance of the Order would have no significant radiological or non-radiological environmental impacts.

Proposed Action: For the proposed action, the environmental impacts are not expected to be significant. Effluent releases and potential doses to the public are regulated by the State of Utah and are not anticipated to change as a result of this revision. The NRC staff previously determined in the 1999 EA that there would be no significant radiological or non-radiological impacts resulting from the proposed limits of uranium and plutonium. In addition, these revisions to the Order are not expected to significantly change environmental impacts from current operations at Envirocare.

For Envirocare, the changes to the limits will allow the site to accept new waste streams, which may increase the number of waste shipments to the site. It is estimated that this may result in approximately 100 additional shipments per year to the site, which equates to about two shipments per week. It is not expected that the small increase in shipments would have a significant environmental impact to the local area.

In addition, it is not expected that Envirocares's use of the new waste processing technologies would have significant environmental impacts. These technologies would be used in treating and stabilizing waste containing SNM, and any effluents from these processes would be collected and managed to prevent release. As stated previously, potential radiological doses are not anticipated to change as a result of the use of these new technologies.

Conclusion

Based on its review, the NRC staff finds that the environmental impacts from the proposed action and the no-action alternative are similar. Since 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

Officials from the State of Utah, Department of Environmental Quality, Division of Radiation Control were contacted about this EA for the proposed action and had no comments. Because the proposed action is not expected to have any impact on threatened or endangered species or historic resources, the U.S. Fish and Wildlife Service and the State of Utah Historic Preservation Officer were not contacted.

III. Finding of No Significant Impact

On the basis of the EA, The NRC has concluded that there are no significant environmental impacts from the proposed amendment and has determined not to prepare an environmental impact statement.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, will be 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: Envirocare's June 8, 2003, request (ADAMS Accession No. ML031950334) and the NRC staff's June 2005 SER (ADAMS Accession No. ML041190003). 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, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated in Rockville, Maryland, this 11th day of July, 2005.

For the Nuclear Regulatory Commission.

Scott C. Flanders,

Deputy Director, Environmental & Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–14026 Filed 7–15–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A–133 Compliance Supplement

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the 2005 Circular A–133 Compliance Supplement.

SUMMARY: This notice announces the availability of the Compliance Supplement (Supplement) for 2005. The Single Audit Act Amendments of 1996 and OMB Circular A–133 provide for the Office of Management and Budget to issue a compliance supplement to assist auditors in performing the required audits under Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations. Annually, OMB works with the Federal agencies to update the program objectives, procedures and key compliance requirements which the Federal

Government expects to be considered in single audits of federal programs. For 2005, the updates include new or significantly changed programs in Parts 4, those parts of the Supplement that relate to the Part 4 changes and updated appendices. The 2005 Supplement updates amend the 2004 Supplement and should be used in conjunction with the 2004 Supplement to perform audits for fiscal years beginning after June 30, 2004.

In summary, the 2005 Supplement updates include the following:

- Updated Table of Contents.
- Updated Parts 1 and 2.
- Six new programs.
- A re-write of 10 programs with significant changes.
- Two deleted programs.
- Updated appendices III, IV and V.
- A listing of minor changes for 28 programs (Appendix V).

A complete list of changes from the 2004 Supplement can be found at Appendix V of the 2005 Supplement. Due to its length, the 2005 Supplement updates are not included in this notice but are available on the OMB Web site at (*http://www.whitehouse.gov/omb/circulars/a133-compliance/05/05toc.html*) or in hard copy from the Government Printing Office (see **ADDRESSES** for information about how to obtain a copy). This notice also offers interested parties an opportunity to comment on the 2005 Supplement updates.

DATES: The 2005 Supplement will apply to audits performed under OMB Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, for fiscal years beginning after June 30, 2004 and amends the 2004 Supplement. All comments on the 2005 Supplement must be in writing and received by October 30, 2005. Late comments will be considered to the extent practicable.

ADDRESSES: Copies of the 2005 Supplement updates may be purchased at any Government Printing Office (GPO) bookstore. The main GPO bookstore is located at 710 North Capitol Street, NW., Washington, DC 20401, (202) 512–0132. A copy may also be obtained under the ''Grants Management'' heading from the OMB home page on the Internet, which is located at *http://www.omb.gov/*, and then select ''Circulars—Audit Requirements—A–133.''

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to *Hai_M._Tran@omb.eop.gov*. Please include ''A–133 Compliance Supplement Updates-2005'' in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–3952.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. Subrecipients should contact their pass-through entity. Federal agencies should contact Gilbert Tran, Office of Management and Budget, Office of Federal Financial Management, telephone (202) 395–3052.

Linda M. Combs,

Controller.

[FR Doc. 05–14090 Filed 7–15–05; 8:45 am]

BILLING CODE 3110–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Annual Earnings Questionnaire for Annuitants in Last Pre-Retirement Non-Railroad Employment; OMB 3220–0179.

Under section 2(e)(3) of the Railroad Retirement Act (RRA), an annuity is not payable for any month in which a beneficiary works for a railroad. In addition, an annuity is reduced for any month in which the beneficiary works for an employer other than a railroad employer and earns more than a prescribed amount. Under the 1988 amendments to the RRA, the Tier II portion of the regular annuity and any supplemental annuity must be reduced by one dollar for each two dollars of Last Pre-Retirement Non-Railroad Employment (LPE) earnings for each month of such service. However, the reduction cannot exceed fifty percent of the Tier II and supplemental annuity amount for the month to which such deductions apply. LPE generally refers to an annuitant's last employment with a non-railroad person, company, or institution prior to retirement which was performed whether at the same time of, or after an annuitant stopped railroad employment. The collection obtains earnings information needed by the RRB to determine if possible reductions in annuities because of Last Pre-Retirement Non-Railroad Employment Earnings (LPE) are in order.

The RRB utilizes Form G–19L to obtain LPE earnings information from annuitants. Companion Form G–19L.1, which serves as an instruction sheet and contains the Paperwork Reduction/Privacy Act Notice for the collection accompanies each Form G–19L sent to an annuitant. One response is requested of each respondent. Completion is required to retain a benefit. The RRB proposes a minor non-burden impacting editorial change to Form G–19L for clarification purposes.

The estimated annual respondent burden is as follows:

Estimated number of responses: 300.

Estimated completion time per response: 15 minutes.

Estimated annual burden hours: 75.

Additonal Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV*. Written

comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–14008 Filed 7–15–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–10; SEC File No. 270–154; OMB Control No. 3235–0122.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–10 (17 CFR 240.17a–10) requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 (17 CFR section 240.17a–5) to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 500 broker-dealers will spend 12 hours per year complying with Rule 17a–10. The total burden is estimated to be approximately 6,000 hours. Each broker-dealer will spend approximately $880 per response [1] for a total annual expense for all broker-dealers of $440,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

Dated: July 6, 2005.

Jill M. Peterson.

Assistant Secretary.

[FR Doc. E5–3788 Filed 7–15–05; 8:45 am]

BILLING CODE 8010–01–P

[1] According to the Securities Industry Association's guide on management and professional earnings, the median salary for a financial reporting manager is $97,500. Assuming that a financial reporting manager works 1800 hours per year, he or she earns $54.17 per hour. Adding in overhead costs of 35%, the hourly rate equals $73.13 per hour, or $877.56 per 12-hour response.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52014; File No. SR–Amex–2005–035]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto To List and Trade Short Term Option Series

July 12, 2005.

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 March 23, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been substantially prepared by the Exchange. Amex filed Amendment No. 1 with the Commission on June 1, 2005.[3] This notice and order requests comment on the proposal from interested persons and approves the amended proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a pilot program to list and trade option series that expire one week after being opened for trading (''Short Term Option Series''). The Exchange proposed that the pilot program extend one year from the date of this approval. The text of the proposed rule change, as amended, is available on Amex's Web site (*http://www.amex.com*), at Amex's principal office, 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, Amex included statements concerning the purpose of and basis for the proposal 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. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish a pilot program to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened. Under the proposal, the Exchange could select up to five approved option classes [4] on which Short Term Option Series could be opened. A series could be opened on any Friday that is a business day (''Short Term Option Opening Date'') and would expire at the close of business on the next Friday that is a business day (''Short Term Option Expiration Date''). If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday.

The proposal would allow the Exchange to open up to five Short Term Option Series for each Short Term Option Expiration Date. The strike price for each series would be fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security, or the calculated index value in the case of an index class, at about the time that Short Term Option Series was opened for trading on the Exchange. No Short Term Option Series on an option class would be opened in the same week in which a monthly option series on the same class is expiring, because the monthly option series in its last week before expiration is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the settlement times for the proposed Short Term Options Series.

[4] Short Term Option Series could be opened in any option class that satisfied the applicable listing criteria under Amex rules (*i.e.*, stock options, options on exchange traded funds (as defined under Amex Rule 915, Commentary .06), or options on indexes.)

functionally equivalent to the Short Term Option Series. The intervals between strike prices on Short Term Option Series would be the same as with the corresponding monthly option series.

The Exchange believes that Short Term Option Series would provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. For that reason, the Exchange proposes to employ a limited pilot program for Short Term Option Series. Under the terms of the pilot program, the Exchange could select up to five options classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. The Exchange also could list and trade any Short Term Option Series on an option class that is selected by another exchange with a similar pilot program. The Exchange believes that limiting the number of option classes on which Short Term Option Series may be opened would help ensure that the addition of the new series through this pilot program would have only a negligible impact on the Exchange's and OPRA's quoting capacity. Also, limiting the term of the pilot program to a period of one year would allow the Exchange and the Commission to determine whether the Short Term Option Series program should be extended, expanded, and/or made permanent.

As originally proposed, all Short Term Option Series would be P.M.-settled. However, in Amendment No. 1, the Exchange revised the proposal to provide that Short Term Option Series would be P.M.-settled, except for Short Term Option Series on indexes, which would be A.M.-settled.

The Exchange represents that it has the system capacity to adequately handle the new option series contemplated by this proposal. The Exchange provided the Commission information in a confidential submission to support that representation.

The Exchange proposed that the pilot program extend one year from the date of this approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [5] in general, and furthers the objectives of section 6(b)(5) of the Act [6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Discussion

After careful review, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposal is consistent with the requirements of section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that listing and trading Short Term Option Series, under the terms described in the Exchange's proposal, will further the public interest by allowing investors new means of managing their risk exposures and carrying out their investment objectives. The Commission also believes that the pilot program strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of option series that could compromise options quotation capacity. The Commission expects the Exchange to monitor the trading and quotation volume associated with the additional option series created under the pilot program and the effect of these additional series on the capacity of the Exchange's, the Options Price Reporting Authority's, and vendors' systems.

The Commission finds good cause pursuant to section 19(b)(2) of the Act [9] for approving the amended proposal prior to the thirtieth day after its publication in the **Federal Register**. The Commission recently approved a rule change proposed by the Chicago Board Options Exchange, Incorporated (''CBOE'') to list and trade short-term options series.[10] Because the CBOE proposal was open for a full comment period and CBOE adequately responded to the issues raised by commenters, the Commission does not believe that an additional comment period for Amex's substantially identical proposal is necessary. The Commission believes that accelerating approval of Amex's proposal will benefit investors by furthering competition, without undue delay, among the markets that wish to trade these products.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–Amex–2005–035. 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release No. 52011 (July 12, 2005) (order approving SR–CBOE–2004–63).

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–Amex–2005–035 and should be submitted on or before August 8, 2005.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change, as amended (SR–Amex–2005–035), is hereby approved on an accelerated basis and as a pilot program, through July 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3785 Filed 7–15–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52012; File No. SR–ISE–2005–17]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto to List and Trade Short Term Option Series

July 12, 2005.

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 March 7, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. ISE filed Amendment No. 1 with the Commission on April 25, 2005.[3] This notice and order requests comment on the proposal from interested persons and approves the amended proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a pilot program to list and trade option series that expire one week after being opened for trading (''Short Term Option Series''). The Exchange proposed that the pilot program extend one year from the date of this approval. The text of the proposed rule change, as amended, is available on ISE's Web site *(http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at ISE's principal office, 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, ISE included statements concerning the purpose of and basis for the proposal 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. 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 proposes to establish a pilot program to list and trade Short Term Option Series, which would expire one week after the date on which a series is opened. Under the proposal, the Exchange could select up to five approved option classes[4] on which Short Term Option Series could be opened. A series could be opened on any Friday that is a business day (''Short Term Option Opening Date'') and would expire at the close of business on the next Friday that is a business day (''Short Term Option Expiration Date''). If a Friday were not a business day, the series could be opened (or would expire) on the first business day immediately prior to that Friday.

The proposal would allow the Exchange to open up to five Short Term Option Series for each Short Term Option Expiration Date. The strike price for each series would be fixed at a price per share, with at least two strike prices above and two strike prices below the approximate value of the underlying security, or the calculated index value in the case of an index class, at about the time that Short Term Option Series was opened for trading on the Exchange. No Short Term Option Series on an option class would be opened in the same week in which a monthly option series on the same class is expiring, because the monthly option series in its last week before expiration is functionally equivalent to the Short Term Option Series. The intervals between strike prices on Short Term Option Series would be the same as with the corresponding monthly option series.

The Exchange believes that Short Term Option Series would provide investors with a flexible and valuable tool to manage risk exposure, minimize capital outlays, and be more responsive to the timing of events affecting the securities that underlie option contracts. At the same time, the Exchange is cognizant of the need to be cautious in introducing a product that can increase the number of outstanding strike prices. For that reason, the Exchange proposes to employ a limited pilot program for Short Term Option Series. Under the terms of the pilot program, the Exchange could select up to five options classes on which Short Term Option Series may be opened on any Short Term Option Opening Date. The Exchange also could list and trade any Short Term Option Series on an option class that is selected by another exchange with a similar pilot program. The Exchange believes that limiting the number of option classes on which Short Term Option Series may be opened would help ensure that the addition of the new series through this pilot program would have only a negligible impact on the Exchange's and OPRA's quoting capacity. Also, limiting the term of the pilot program to a period of one year would allow the Exchange and the Commission to determine whether the Short Term Option Series program should be extended, expanded, and/or made permanent.

As originally proposed, all Short Term Option Series would be p.m.-

[3] Amendment No. 1 revised the settlement times for the proposed Short Term Options Series.

[4] Short Term Option Series could be opened in any option class that satisfied the applicable listing criteria under ISE rules (*i.e.*, stock options, options on exchange traded funds (as defined under ISE Rule 502(h)), or options on indexes).

settled. However, in Amendment No. 1, the Exchange revised the proposal to provide that Short Term Option Series listed on currently approved option classes shall settle, with respect to a.m. or p.m. settlement, in the same manner as do the monthly expiration series in the same options class.

The Exchange represents that it has the system capacity to adequately handle the new option series contemplated by this proposal. The Exchange provided the Commission information in a confidential submission to support that representation.

The Exchange proposed that the pilot program extend one year from the date of this approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Discussion

After careful review, the Commission finds that the proposal, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that listing and trading Short Term Option Series, under the terms described in the Exchange's proposal, will further the public interest by allowing investors new means of managing their risk exposures and carrying out their investment objectives. The Commission also believes that the pilot program strikes a reasonable balance between the Exchange's desire to offer a wider array of investment opportunities and the need to avoid unnecessary proliferation of option series that could compromise options quotation capacity. The Commission expects the Exchange to monitor the trading and quotation volume associated with the additional option series created under the pilot program and the effect of these additional series on the capacity of the Exchange's, the Options Price Reporting Authority's, and vendors' systems.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act [9] for approving the amended proposal prior to the thirtieth day after its publication in the **Federal Register**. The Commission recently approved a rule change proposed by the Chicago Board Options Exchange, Incorporated (''CBOE'') to list and trade short-term options series.[10] Because the CBOE proposal was open for a full comment period and CBOE adequately responded to the issues raised by commenters, the Commission does not believe that an additional comment period for ISE's substantially identical proposal is necessary. The Commission believes that accelerating approval of ISE's proposal will benefit investors by furthering competition, without undue delay, among the markets that wish to trade these products.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2005–17 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–17. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–17 and should be submitted on or before August 8, 2005.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change, as amended (SR–ISE–2005–17), is hereby approved on an accelerated basis and as a pilot program, through July 12, 2006.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital information. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] *See* Securities Exchange Act Release No. 52011 (July 12, 2005) (order approving SR–CBOE–2004–63).

[11] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3786 Filed 7–15–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52007; File No. SR–NSX–2005–02]

Self-Regulatory Organizations; National Stock Exchange; Order Granting Approval to Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to the Composition of NSX's Board of Directors and Committees

July 11, 2005.

On March 31, 2005, the National Stock Exchange (the ''Exchange'' or ''NSX'') 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 its By-Laws to make modifications to the composition of its Board of Directors (''Board'') and committees. On March 31, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On May 19, 2005, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 7, 2005.[5] The Commission received no comments on the proposal.

In connection with a termination of rights agreement (''Termination Agreement'') entered into between NSX and the Chicago Board Options Exchange, Incorporated (''CBOE'') on September 27, 2004, and in order to conform to recent industry trends and comply with regulatory requirements that the Commission may impose upon self-regulatory organizations, the Exchange proposed various changes to its By-Laws. The Exchange proposed the following changes relating to Board composition, terms of office and candidate selection: (A) Change the position on the Board reserved for the President of the Exchange in favor of the NSX's Chief Executive Officer;[6] (B) combine the two Designated Dealer and one At-Large Member positions on the Board into a single ''Member Director'' category, which would be defined in proposed Article V, Section 1(a)(ii) of the NSX By-Laws as ''Proprietary Members or executive officers of Proprietary Member organizations,'' and which would continue to consist of three positions; (C) modify the Member Director candidate selection process described in Article V, Section 2.2 of the NSX By-Laws to clarify that the annual election, at which Proprietary Members vote for the candidate(s), occurs during the annual meeting of the membership, which is in January; (D) eliminate the existing Public Director[7] category in favor of an ''Independent Director'' category, which would be defined in proposed Article I, Section 1(k) of the NSX By-Laws as ''a member of the Board that the Board has determined to have no material relationship with the Exchange or any affiliate of the Exchange, any member of the Exchange or any affiliate of any such member, other than as a member of the Board'' and increase the number of such directors from three to six positions; (E) delete provisions relating to the procedure for selecting Public Directors and replace such provisions with the procedure for selecting Independent Directors; (F) combine the CBOE Chairman, CBOE President and CBOE Member Director positions on the Board into a single ''CBOE Director'' category, which would be defined in proposed Article V, Section 1(a)(iv) of the NSX By-Laws as ''executive officers of CBOE, CBOE members or executive officers of CBOE member organizations'' and decrease the number of such directors from six to three positions; (G) modify the definition of ''CBOE member(s)'' to delete the requirement, in the case of a transferable regular CBOE membership that is subject to a lease agreement, that the lessee and not the lessor be deemed to be the CBOE member and reorganize the list of definitions in alphabetical order and renumber the provisions accordingly; and (H) modify the provisions relating to Directors' terms of office to, among other things, add procedures to account for when new Member Directors' and new Independent Directors' initial terms would begin.

Further, the Exchange proposed to adopt provisions to accommodate future Board composition changes, which would achieve a Board comprised of a majority of Independent Directors, resulting from subsequent closings under the Termination Agreement.

Finally, the Exchange proposed to revise the general composition requirements for committees contained in Article VI, Section 1.4 of the NSX By-Laws to provide that the membership of such committees would be chosen in such a way as to assure the fair representation of the public and, as appropriate, all classes of members, and to delete references in: (a) Article VI, Section 1.4 of the NSX By-Laws to the requirements that at least one member of each committee be a member of the Board and that all members of the Executive Committee be members of the Board, and (b) Article VI, Section 3.1 of the NSX By-Laws to the requirements that the Securities Committee have at least one Proprietary Member and at least one representative of issuers and investors who is not associated with a member or a broker or dealer, and certain other composition requirements that are no longer applicable.

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[8] and, in particular, the requirements of Section 6(b) of the Act[9] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act[10] in particular, which requires, among other things, that the rules of an exchange be 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 and Section 6(b)(1) of the Act,[11] which requires that an Exchange be so organized and have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

The Commission notes that the proposal is designed to implement

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced the original filing in its entirety.

[4] In Amendment No. 2, the Exchange revised the proposed definition of ''Independent Director.''

[5] *See* Securities Exchange Act Release No. 51765 (May 31, 2005), 70 FR 33238.

[6] The President and Chief Executive Officer are currently the same person.

[7] ''Public Directors'' are defined as ''representatives of issuers and investors who shall not be associated with any member of the Exchange or with any registered broker or dealer or with another self-regulatory organization, other than as a public trustee or director[.]'' Article V, Section 1.1(g) of the NSX By-Laws.

[8] 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).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(1).

changes made necessary by the terms of the Termination Agreement. These changes, in part, result from the relinquishment by CBOE of its three NSX Board positions, as well as, CBOE's anticipated relinquishment of additional NSX Board positions. The Commission further notes that the revisions relating to Exchange governance, such as the creation of a new category of directors known as ''Independent Directors,'' the implementation of a transition schedule for having a majority of NSX's thirteen member Board consist of Independent Directors, and the various changes to the composition of NSX's committees, are being made in anticipation of certain governance requirements that the Commission may impose upon self-regulatory organizations. The Commission believes that a Board consisting of a majority of independent directors should help address the conflicts of interest that otherwise may arise when persons with a relationship to the Exchange are involved in key decisions, and should increase the likelihood that the Board will act in accordance with the mandates of the Act and in the best interests not only of the Exchange but also investors.

Therefore, in the Commission's view, the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(1) [12] and 6(b)(5) [13] of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NSX–2005–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–3787 Filed 7–15–05; 8:45 am]

BILLING CODE 8010–01–P

[12] 12 15 U.S.C. 78f(b)(1).

[13] 13 15 U.S.C. 78f(b)(5).

[14] 14 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10135 and #10136]

Alabama Disaster #AL–00001

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA–1593–DR), dated 07/10/2005.

Incident: Hurricane Dennis.

Incident Period: 07/10/2005 and continuing.

Effective Date: 07/10/2005.

Physical Loan Application Deadline Date: 09/08/2005.

EIDL Loan Application Deadline Date: 04/10/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/10/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Baldwin and Mobile.

Contiguous Counties:

Alabama: Clarke, Washington, Escambia and Monroe.

Florida: Escambia.

Mississippi: George, Greene, and Jackson.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere:	5.750
Homeowners Without Credit Available Elsewhere:	2.875
Businesses With Credit Available Elsewhere:	6.387
Businesses & Small Agicultural Cooperatives Without Credit Available Elsewhere:	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	4.750
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 101358 and for economic injury is 101360

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–13999 Filed 7–15–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10137 and #10138]

Florida Disaster #FL–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–1595–DR), dated 07/10/2005.

Incident: Hurricane Dennis.

Incident Period: 07/10/2005 and continuing.

DATES: Effective Date: 07/10/2005.

Physical Loan Application Deadline Date: 09/08/2005.

EIDL Loan Application Deadline Date: 04/10/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/10/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Escambia, Santa Rosa.

Contiguous Counties: Florida: Okaloosa; Alabama: Baldwin, Escambia.

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with credit available elsewhere	6.387
Businesses and small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	4.750
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 101378 and for economic injury is 101380.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–14000 Filed 7–15–05; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Demonstration Project on Direct Payment of Fees to Non-Attorney Representatives

AGENCY: Social Security Administration (SSA).

ACTION: Notice.

SUMMARY: This notice provides information about the continuing education requirement that non-attorney representatives must satisfy to participate in the 5-year demonstration project on direct payment of fees to non-attorneys under section 303 of the Social Security Protection Act of 2004 (SSPA). The notice also announces that we have lowered the liability insurance requirements for participants and determined that applicants will be given an opportunity to correct defects in their applications to participate in the demonstration project, in certain circumstances; to protest a denial of their applications for any reason; and, where warranted, to have their paid application fee refunded or applied to satisfy the fee requirement for a subsequent application. The notice also clarifies the requirement regarding experience in representing claimants before SSA.

FOR FURTHER INFORMATION CONTACT: Michael Zambonato, Social Security Administration, Office of Income Security Programs, 1450 RRCC, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–5419.

SUPPLEMENTARY INFORMATION:

Continuing Education Requirement

Section 303(b)(5) of the SSPA requires that participants in the demonstration project on direct payment of fees to non-attorneys demonstrate ongoing completion of qualified courses of continuing education, including education regarding ethics and professional conduct, that are designed to enhance professional knowledge in matters related to entitlement to, or eligibility for, benefits based on disability under titles II and XVI of the Social Security Act (the Act). That section also provides that the continuing education courses and instructors shall meet such standards as we shall prescribe.

Courses provided by an accredited college or university, a State bar association, an organization accredited by a State bar, a professional organization that (in whole or in part) specializes in representing claimants before governmental agencies (*e.g.*, the American Bar Association, the National Organization of Social Security Claimants' Representatives, and the National Association of Disability Representatives, Inc.), or a governmental agency may be used to meet the continuing education requirement. Generally, we will defer to the organization providing the course as to the subject matter, the requirements for receiving credit for an hour of instruction, and the qualifications of the instructor, though we reserve the right to reject specific courses or instructors if we determine that the course or the instructor is unacceptable.

We have determined that participants in the demonstration project will be required to complete at least 12 hours of qualifying continuing education courses in the 18-month period beginning 6 months prior to the month in which we notify the individual that he or she has passed the examination. After this initial 18-month period, the representative will be required to complete 24 hours of instruction in each subsequent, 2-year period. For example, if we notify an individual that he or she passed the examination in July 2005, the initial, 18-month period begins January 1, 2005, and runs through June 30, 2006. The first 2-year period begins July 1, 2006, and the next begins July 1, 2008.

In each continuing education period, participants must take at least one hour of continuing education on ethics and professional conduct for representatives and at least one hour of continuing education regarding entitlement to, or eligibility for, benefits under titles II and XVI of the Act. Participants are otherwise free to determine the mix of course hours from these two categories.

In recognition of the additional work involved in teaching a continuing education course, a participant may receive 2 hours of credit per 1 course hour, up to a maximum of 6 hours, if the participant was an instructor in the course. The 2 for 1 credit applies only with respect to a course hour during which the applicant was an instructor. For example, if the applicant was an instructor during 2 hours of a 3-hour course, the applicant would be credited with 5 continuing education hours.

Continuing education is credited on the day the course is completed, and is credited to the continuing education period in which the course completion date occurs, unless it is used to complete an unmet continuing education requirement from the prior period. Thus, for example, for a non-attorney representative who has 18-month and 24-month continuing education periods as described above, all of the hours in an 8-hour class that begins on June 30, 2006, and ends on July 1, 2006, would be credited to the 24-month period beginning July 1, 2006, unless one or more of those hours is used to complete an unmet continuing education requirement for the period ending June 30, 2006. Hours earned in one continuing education period may be used to satisfy an unmet requirement for the prior period only for the purpose of ending a suspension that has gone into effect, not to prevent the occurrence of a suspension. Any continuing education hours allocated to a prior continuing education period in this manner may not also be counted toward the continuing education requirement in the current period. Thus, for example, if 1 hour of an 8-hour course completed in the current period is used to satisfy an unmet continuing education requirement for the prior period, only 7 of the 8 education hours from the course would be credited toward satisfaction of the continuing education requirement for the current period.

A participant in the demonstration project who fails to timely meet the continuing education requirement will be suspended from receiving direct payment of fees in the demonstration project until we determine that the requirement has been met and we end the suspension. A suspension takes effect in the continuing education period after the period in which the participant failed to meet the continuing education requirement. We will not withhold or make direct payment of fees to the representative in any case we effectuate while the suspension is in effect. For this purpose, the date of effectuation is the date on which an authorized SSA employee first certifies that the evidence necessary to make payment in a case is present.

Prior to suspending a participant, we will notify him or her that we propose to suspend eligibility for direct payment of fees unless he or she protests within 10 calendar days of the date of notice of proposed suspension and shows us that the requirement was timely met. If there is no protest, the suspension will be effective the first day of the month following the month in which the protest period ends. If there is a protest and we determine that the continuing education requirement was not timely met, the suspension will be effective the first day of the month following the month in which we notify the

participant that we have denied the protest. In either case, we will notify the participant of the date on which the suspension will take effect. The participant's suspended status will be posted to the internal computerized system we use to track the eligibility of non-attorney representatives to receive direct payment of fees as of the first day of the suspension.

We will terminate a suspension if the suspended individual notifies us of the completion of the outstanding course work and we determine that the previously unmet requirement has been satisfied. A suspension ends effective with the first day of the month following the month in which we determine that the non-attorney representative has satisfied the unmet continuing education requirement from the prior period, unless we make that determination in the first month of the current period. In the latter event, in order to ensure that failure to timely meet the continuing education requirement results in an actual suspension, considering our rules for when a suspension begins and ends, the suspension ends effective with the first day of the second month following the month in which we determine that the previously unmet requirement has been satisfied. We will notify a participant in advance of the date on which a suspension will end. We will also modify our tracking site as of that date to reflect the representative's renewed eligibility to receive direct payment of fees. Favorably decided cases that are effectuated (see above) on the day the suspension ends will be subject to benefit withholding and direct payment of fees.

Periods in which a participant in the demonstration project is ineligible for direct payment of fees because of failure to meet the continuing education requirement will not extend the continuing education periods that apply with respect to the participant. Thus, for example, if an individual whose 18-month and 24-month education periods begin on, respectively, January 1, 2005, and July 1, 2006, becomes ineligible to participate in the project for the months of August and September of 2006 because of failure to meet the continuing education requirement for the prior period ending June 30, 2006, the individual's continuing education period of July 1, 2006, through June 30, 2008, would not be extended. The individual must still complete the required 24 hours of continuing education courses for that latter period by June 30, 2008.

Participants will be required to report continuing education to CPS Human Resource Services (CPS), the private contractor we are using to assist us in administering the prerequisites process (see below for additional information concerning CPS). CPS will make available, on its Web site at *http://www.cps.ca.gov/ssa/signin.asp*, an electronic template upon which participants may upload their continuing education information. Participants also may submit the information by completing a paper form available from CPS. Participants must include the following information on each course: (1) Name of the course; (2) name of the organization providing the course; (3) dates of the course, including the course completion date; (4) number of hours completed, as determined by the organization providing the course; (5) course description provided by that organization; (6) subject category (*i.e.*, either ethics and professional conduct or benefit entitlement/eligibility based on disability under title II or title XVI of the Act); (7) whether a certificate was received for taking the course; (8) name of the course instructor(s); (9) information for contacting the instructor and the organization; and (10) whether the project participant was an instructor in the course and, if so, the number of course hours during which the participant was an instructor.

Changes to the Insurance Requirements

Under section 303(b)(3) of the SSPA, non-attorney representatives who apply to participate in the demonstration project must have professional liability insurance or equivalent insurance adequate to protect claimants in the event of malpractice by the representative. On January 13, 2005, we announced that applicants would be required to have professional liability insurance for coverage of errors and omissions in the minimum total annual amount of $1 million (for all incidents in the year) plus coverage of $250,000 per incident (70 FR 2447, 2449). After further consideration, and based on experience gained in the first application period, which began on March 7, 2005, we have decided to reduce the per-incident minimum coverage from $250,000 to $100,000, and consider business liability insurance to constitute insurance equivalent to professional liability insurance provided the business insurance provides coverage that satisfies the required minimum per-incident and aggregate amounts. We have also decided to change the minimum annual aggregate coverage amount for an individual's professional liability insurance to $500,000 and the minimum annual aggregate amount under a business liability policy to the amount determined in accordance with the following schedule—

Number of covered employees	Minimum aggregate amount
1 to 10	$500,000
11 to 25	1,000,000
26 to 50	2,000,000
51 to 100	3,000,000
101 to 200	4,000,000
201 or more	5,000,000

We believe that these insurance coverage amounts will adequately protect claimants in the event of malpractice by non-attorney representatives, while increasing the ability of non-attorney representatives who wish to participate in the demonstration project to obtain insurance. These amounts are consistent with insurance agency practices and standards, which emphasize the per-incident coverage and rely on graduated schedules in increasing minimum aggregate amounts.

When we determine that a participant has failed to maintain the required insurance coverage, we will notify the individual that his or her eligibility for direct payment of fees will be suspended unless proof that the required insurance coverage is in force is submitted within 15 calendar days of the date of our notice. We will send the individual an additional notice following that period to advise the individual whether eligibility for direct payment will be suspended.

A suspension for failure to maintain the required insurance coverage takes effect on the first day of the month following the month in which we notify the individual that eligibility will be suspended. A suspension for failure to maintain required insurance coverage ends effective with the first day of the month following the month in which we notify the individual that we have determined that the required insurance coverage is again in force. We will not withhold or make direct payment of fees to the representative in any case we effectuate while the suspension is in effect.

Opportunity To Cure Defective Applications

In the **Federal Register** notice of January 13, 2005, we indicated that applicants who failed to have their completed application materials postmarked within the 4-week application period would have their applications rejected and would be required, if they wanted to participate in the demonstration project, to file a new

application and again pay the $1000 application fee in a subsequent application period (70 FR 2447, 2448). Based on experience gained during the first application period (*i.e.*, the 4-week period that began on March 7, 2005), we have determined that applicants experienced significant difficulties in submitting, within such a short time, proof of satisfaction of the prerequisites concerning insurance, education or equivalent experience, and representational experience before SSA. Therefore, we have decided to allow applicants who have submitted their application and paid their application fee of $1000 an additional period in which they may perfect an otherwise incomplete application package before we make a determination on their application. For example, applicants may perfect their applications by substituting the names and SSNs of additional clients that they have represented within a requisite period if their original submissions in support of the representational requirement cannot be verified, or by obtaining appropriate liability coverage if the coverage originally submitted is found to be inadequate. The period for perfecting the application, which applies only where the application fee has been timely paid, ends 6 weeks after the close of the 4-week application period.

Opportunity To Protest Denial of Application

Based on experience gained during the first application period, we have also decided to give individuals who have submitted an application that we deny for any reason, including failure of the examination, an opportunity to protest our denial of the application. A denied applicant may protest by filing a protest within 10 calendar days of the date of our notice denying his or her application. It is the responsibility of the applicant to provide any factual information and documentation to support the protest. If we have denied the individual an opportunity to sit for the examination, the individual has a further opportunity during the protest period following our denial notice to correct defects in his or her application, other than failure to timely pay the application fee. Our action in response to the protest is final and not subject to further review.

Refund or Credit for Application Fee

We have further determined based on experience in the first application period that applicants who timely pay their application fee, but do not take the examination, will have an opportunity, upon request and where warranted, to have the fee payment either refunded or applied to satisfy the fee requirement of a subsequent application (the other requirements of which must be satisfied in the subsequent application period). In deciding whether to refund a fee payment, to credit the payment to a subsequent application period, or neither to refund or provide a credit for the payment, we will assess whether the particular circumstances of an individual's case warrant that action, considering basic principles of fairness and sound management. Our determination in response to an applicant's request to have a fee payment refunded or applied to a subsequent application period is final and not subject to review. We will not consider refunding or crediting a fee payment to a subsequent application under any circumstances where an individual has taken and failed the prerequisite examination.

In considering requests for fee relief in cases in which the examination has not been taken, we consider all the circumstances of the particular case. An example of circumstances in which we could find that a fee refund is warranted include those in which an illness diagnosed before we complete processing of the application to determine eligibility to sit for the examination will prevent the applicant from serving as a claimant's representative. Examples of circumstances in which we could decide to credit a fee payment to a subsequent application include those in which an applicant is prevented from taking a scheduled examination by circumstances beyond the applicant's control, such as a death in the applicant's immediate family, a documented illness of the applicant, or a transportation problem that could not have been reasonably anticipated and planned against. We will also consider refunding or crediting a paid fee in cases in which we or CPS provide the applicant erroneous information or information that is not sufficient to inform the applicant adequately regarding the rules of the demonstration project. An example of a situation in which we would not grant fee relief would be that in which an applicant fails to arrive on time for an examination because of circumstances not beyond the applicant's control, such as a traffic problem or a child-care problem of a type that could have been anticipated and planned against.

Clarification of Requirement Regarding Representational Experience

The **Federal Register** notice of January 13, 2005, announced that applicants would be required to show that they had provided representational services as the appointed representative for 5 claimants before SSA within a 24-month period occurring within the 60 months in which the application was filed, and that the representational experience could include representing the claimant at the time at which SSA decided the case at any administrative level or, in cases that have not yet been decided, at a hearing before an SSA Administrative Law Judge (ALJ). (70 FR 2447, 2449.) We are in this current notice clarifying this requirement by specifying that it cannot be satisfied except on the basis of having served as the appointed representative of 5 claimants at one (or more) of these specified times. Representing a claimant before SSA can count toward satisfaction of the representational requirement only if the applicant was serving as the claimant's appointed representative at the time at which SSA decided the case at any administrative level (*i.e.*, the initial, reconsideration, ALJ hearing, or Appeals Council level) or, if the case has not been decided while the applicant was the appointed representative, the applicant appeared as the claimant's appointed representative at a hearing before an ALJ.

Additional Information

Additional information on the demonstration project is available on our Representing Claimants Web site at *http://www.ssa.gov/representation/.* CPS can be reached by:

- Mail, sent to: CPS Human Resource Services, SSA Non-Attorney Representative Demonstration Project, 241 Lathrop Way, Suite A, Sacramento, CA 95815–4242.
- E-mail, sent to *SSA@cps.ca.gov.*
- Telephone, toll free at 1–800–376–5728. The local number in Sacramento is 916–263–3600.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; and 96.006, Supplemental Security Income)

Dated: July 14, 2005.

Fritz Streckewald,

Assistant Deputy Commissioner for Program Policy for Disability and Income Security Programs.

[FR Doc. 05–14138 Filed 7–15–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2005–21074]

Notice of Request for Extension of a Previously Approved Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice; correction.

SUMMARY: The Office of the Secretary published a document in the **Federal Register** on April 29, 2005, concerning a request for an extension of a previously approved information collection. We are correcting the document as set forth below.

FOR FURTHER INFORMATION CONTACT: Ms. Torlanda Archer, Office of the Secretary, Office of International Aviation, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1037.

Correction

In the April 29, 2005, **Federal Register** (70 FR 22388), correct the Estimated Number of Respondents and Estimated Total Burden on Respondents. And add the Average Annual Burden per respondent to read:

Estimated Number of Respondents: 374.

Average Annual Burden per Respondent: 3.45 hours.

Estimated Total Burden on Respondents: 1,290 hours.

Issued in Washington, DC on July 12, 2005.

Jeffrey Gaynes,

Assistant Director for Regulatory Affairs, Office of International Aviation.

[FR Doc. 05–14058 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–62–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 (Formerly Subpart Q) During the Week Ending July 1, 2005

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–2005–21744.

Date Filed: June 29, 2005.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 20, 2005.

Description: Application of Skybus Airlines, LLC requesting a certificate of public convenience and necessity authorizing it to conduct foreign scheduled air transportation of persons, property, and mail between a point or points in the United States and a point or points in Canada.

Renee V. Wright,

Program Manager, Docket Operations Federal Register Liaison.

[FR Doc. 05–14057 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–39]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 8, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–2005–21695 or FAA–2005–21684) by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery : Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room 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.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174 or Susan Lender (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 11, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–21695.

Petitioner: Paladin Aerospace.

Section of 14 CFR Affected: 14 CFR 21.327(f)(2).

Description of Relief Sought: To allow Paladin to export certain aircraft using a weight and balance report listing an aircraft weight that was not measured within the previous 12 months.

Docket No.: FAA–2005–21684.

Petitioner: Lynden Air Cargo, LLC.

Section of 14 CFR Affected: 14 CFR 121.380(a)(2)(ii).

Description of Relief Sought: To allow Lynden Air Cargo, LLC to operate Lockheed Model 382G aircraft without meeting certain record keeping requirements for propeller total time.

[FR Doc. 05–14002 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–37]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application,

processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 28, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–200X–XXXXX) by any of the following methods:

- Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room 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.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 6, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2003–14563.

Petitioner: AirTran Airways, Inc.

Section of 14 CFR Affected: 14 CFR 93.123.

Description of Relief Sought: To permit AirTran Airways, Inc., the use of three slots at Ronald Reagan Washington National Airport (DCA) for service from DCA to Atlanta Hartford International Airport.

[FR Doc. 05–14006 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–21269; Notice 2]

The Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

The Goodyear Tire & Rubber Company (Goodyear) has determined that certain tires it manufactured in 2005 do not comply with S4.3.4(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New pneumatic tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on May 31, 2005, in the **Federal Register** (70 FR 31007). NHTSA received one comment.

Affected are a total of approximately 4,992 Kelly Signature HPT and Essenza B210 Type 2 tires produced from February 1, 2005 to March 31, 2005. S4.3.4(b) of FMVSS No. 109 requires that ''[e]ach marking of the tire's maximum load rating * * * in kilograms shall be followed in parenthesis by the equivalent load rating in pounds * * *.'' The noncompliant tires have the correct maximum load rating in kilograms but the actual stamping for the maximum load in pounds is 2839 pounds, while the correct stamping should be 2833 pounds.

Goodyear believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Goodyear explains that the cause of the noncompliance was the use of a different conversion factor than that used by the Tire and Rim Association. Goodyear states that the noncompliance has no effect on the performance of the tires on a motor vehicle or on motor vehicle safety. Goodyear says that the tires meet or exceed all other tire labeling requirements and all minimum performance requirements of FMVSS No. 109.

The agency agrees with Goodyear's statement that the mismarking does not present a serious safety concern. The agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is that there is no effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. In the agency's judgment, the incorrect labeling will have an inconsequential effect on motor vehicle safety because of the *de minimus* discrepancy in maximum load rating.

In addition, the tires are certified to meet all the performance requirements of FMVSS No. 109. All other informational markings as required by FMVSS No. 109 are present. Goodyear has also corrected the problem.

One comment favoring denial was received from a private individual. The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety. The comment does not address this issue, and therefore has no bearing on NHTSA's determination.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: July 8, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14032 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–20858; Notice 2]

DOT Chemical, Denial of Petition for Decision of Inconsequential Noncompliance

DOT Chemical has determined that certain containers of brake fluid which it manufactured in June 2004 do not comply with S5.1.7, S5.1.9, and S5.1.10

of 49 CFR 571.116, Federal Motor Vehicle Safety Standard (FMVSS) No. 116, ''Motor vehicle brake fluids.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), DOT Chemical has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of the petition was published, with a 30 day comment period, on April 14, 2005 in the **Federal Register** (70 FR 19837). NHTSA received one comment.

Affected are a total of approximately 50,000 containers of DOT 4 brake fluid, lot numbers KMF02 and KMF03, manufactured in June 2004. FMVSS No. 116 requires that, when tested as referenced in S5.1.7 ''Fluidity and appearance at low temperature,'' S5.1.9 ''Water tolerance,'' and S5.1.10 ''Compatibility,'' the brake fluid shall show no crystallization or sedimentation. The subject brake fluid shows crystallization and sedimentation when tested as referenced in S5.1.7 at −40 °F and −58 °F, sedimentation when tested as referenced in S5.1.9 at −40 °F, and crystallization when tested as referenced in S5.1.10 at −40 °F.

DOT Chemical believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. DOT Chemical states that there are fiber-like crystals in the fluid, which are borate salts, and

> are a natural part (no contamination) of DOT 4 brake fluid production (just fallen out of solution in some packaged goods) and have not demonstrated any flow restrictions even at extended periods of low temperatures at −40 °F. Furthermore, when the fluid is subjected to temperatures in a normal braking system, the crystals go back into solution in some cases not to reappear at all at ambient temperatures.

NHTSA received one public comment from a private individual. The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety. The public comment does not address this issue, and therefore has no bearing on NHTSA's determination.

NHTSA has reviewed the petition and has determined that the noncompliance is not inconsequential to motor vehicle safety.

NHTSA notes that we granted petitions for determinations of inconsequential noncompliance of FMVSS No. 116 to Dow Corning Corporation (59 FR 52582, October 18, 1994) and to First Brands Corporation (59 FR 62776, December 6, 1994). In the case of Dow, the FMVSS No. 116 noncompliance arose from a ''slush-like crystallization'' that dispersed ''under slight agitation or warming.'' NHTSA accepted Dow's argument that its ''slush-like crystallization'' does not consist of ''crystals that are either water-based ice, abrasive, or have the potential to clog brake system components.'' NHTSA concurred with Dow's conclusion that ''the crystallization that occurred ought not to have an adverse effect upon braking.'' In the case of First Brands, the FMVSS No. 116 noncompliance arose from a ''soft non-abrasive gel'' that also dispersed under slight agitation or warming.

NHTSA determines that facts leading to the grants of the inconsequential noncompliance petitions of Dow and First Brands are not analogous to the facts in DOT Chemical's situation. In contrast, DOT Chemical's noncompliance results from ''fiber-like crystals'' made of borate salts. These borate salt crystals did not disperse under slight agitation or warming, but had to be physically removed by filtration. DOT Chemical asserts that ''[f]iltration, using Whatman #40 filter paper (25–30 micron particle size) removed all crystals. The crystals are approximately 30–50 microns in width and 3–5 mm in length.'' DOT Chemical does not explain how it can assure that crystals smaller than 25 microns in width did not remain in the brake fluid.

Even assuming that all larger-sized crystals were removed from the fluid, NHTSA is concerned that crystals that are of a size smaller than 25 microns by 3–5 mm would remain in the brake fluid. The thread-like nature of this type of crystallization has the potential to clog brake system components, particularly in severe cold operation conditions. Impurities such as these in the brake system may cause the system to fail, *i.e.*, to lose the ability to stop the vehicle over time due to the accumulation of compressible material in the brake lines. These impurities may also result in the failure of individual brake system components due to the corrosive nature of the contaminants themselves.

In consideration of the foregoing, NHTSA has decided that the petitioner has not met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, DOT Chemical's petition is hereby denied.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: July 8, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14033 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21270; Notice 2]

Mercedes-Benz USA LLC, Grant of Petition for Decision of Inconsequential Noncompliance

Mercedes-Benz USA LLC (Mercedes) has determined that the designated seating capacity placards for certain vehicles that it produced in 2004 do not comply with S4.3(b) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, ''Tire selection and rims.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Mercedes has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on June 2, 2005 in the **Federal Register** (70 FR 32398). NHTSA received no comments.

Affected are a total of approximately 1,576 SLK class vehicles produced between March 24, 2004 and December 15, 2004. S4.3(b) of FMVSS No. 110 requires that a ''placard, permanently affixed to the glove compartment door or an equally accessible location, shall display the * * * [d]esignated seating capacity * * *.'' The noncompliant vehicles have placards stating that the seating capacity is four, when in fact the seating capacity is two.

Mercedes believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Mercedes states:

> * * * most, if not all, consumers will look at the number of seats in the vehicle and the number of safety belts to determine its capacity, rather than looking at the tire information placard. Because the SLK Roadster is a two-seater vehicle with no rear seat, it is immediately obvious that the seating capacity is two and not four, and that it is not possible to seat four occupants in the vehicle.

Mercedes further states:

> Because it is impossible for the SLK to hold four occupants, the seating capacity labeling error has no impact on the vehicle capacity weight, recommended cold tire inflation

pressure and recommended size designation information. All of this information is correct on the tire information placard. Moreover, the purpose of providing seating capacity information is to prevent vehicle overloading. Because the SLK holds only two occupants, it is not possible to overload the vehicle due to reliance on the tire information placard.

NHTSA agrees with Mercedes that the noncompliance is inconsequential to motor vehicle safety. As Mercedes states, because the vehicles are two-seaters with no rear seat, it is obvious that the seating capacity is two and not four. Therefore it is impossible to overload the vehicles by relying on the incorrect designated seating capacity information. As Mercedes further points out, the other information on the tire information placard is correct. Mercedes has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Mercedes' petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: June 8, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14034 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–21268; Notice 2]

The Goodyear Tire & Rubber Company, Grant of Petition for Decision of Inconsequential Noncompliance

The Goodyear Tire & Rubber Company (Goodyear) has determined that certain tires it manufactured in 2005 do not comply with S6.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on May 31, 2005, in the **Federal Register** (70 FR 31006). NHTSA received one comment.

Affected are a total of approximately 958 Wrangler AT tires produced from March 7, 2005 to April 4, 2005. S6.5(b) of FMVSS No. 119 requires that each tire shall be marked with ''[t]he tire identification number required by part 574 of this chapter.'' The noncompliant tires should have been marked ''DOT PJ10 MPH0 wwyy,'' but were actually marked with one of the following serial codes: DOT 1085 PJ10 MPH0, DOT 1086 PJ10 MPH0, DOT 2013 PJ10 MPH0, or DOT 2014 PJ10 MPH0.

Goodyear believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Goodyear states that the mislabeling creates no unsafe condition. Goodyear further states that all of the markings related to tire service including load capacity and corresponding inflation pressure are correct, and that the tires meet or exceed all applicable FMVSS performance requirements. Goodyear says that when consumers register these tires in Goodyear's registration database, they can be identified in the unlikely event that they would be involved in a tire recall.

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety. The mislabeling does not create an unsafe condition, nor will it result in unsafe use of the tires. As Goodyear states, when consumers register these tires in Goodyear's registration database, they can be identified in the event of a recall. In addition, the tires meet or exceed all of the performance requirements of FMVSS No. 119, and all other informational markings as required by FMVSS No. 119 are present. Goodyear has corrected the problem.

One comment favoring denial was received from a private individual. The issue to be considered in determining whether to grant this petition is the effect of the noncompliance on motor vehicle safety. The comment does not address this issue, and therefore has no bearing on NHTSA's determination.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Goodyear's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: July 8, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–14035 Filed 7–15–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–364 (Sub-No. 10X)]

Mid-Michigan Railroad, Inc.—Discontinuance of Service Exemption—in Kent County, MI

On June 28, 2005, Mid-Michigan Railroad, Inc. (MMRR), filed with the Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. MMRR seeks to discontinue service over a 1.50-mile line of railroad, extending from milepost 157.97 on MMRR's east-west rail line to the end of the line in Kent County, MI.[1] The line traverses U.S. Postal Service ZIP Codes 49503 and 49504, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the possession of MMRR will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 14, 2005. Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must

[1] The line was leased from the Central Michigan Railway Company (CMRY) by the Grand Rapids Eastern Railroad, Inc. (GRE), in 1993. *See Grand Rapids Eastern Railroad, Inc.—Purchase, Lease and Operation Exemption—Rail Lines of Central Michigan Railroad Company*, Finance Docket No. 32297 (ICC served on July 26, 1993). GRE subsequently merged into MMRR. *See RailTex, Inc., Mid-Michigan Railroad, Inc., Michigan Shore Railroad, Inc., and Grand Rapids Eastern Railroad, Inc.—Corporate Family Transaction Exemption*, STB Finance Docket No. 33693 (ICC served Jan. 20, 1999). CMRY continues to own the assets that MMRR operates over, including, but not limited to, the track, ties, ballast, other track material and land. MMRR has no authority to alter, remove or dispose of any of the assets that are on the line. MMRR seeks discontinuance because The Grand Rapids Press, the only shipper on the line, has stopped using the line, moved its facility to another location and does not oppose the discontinuance.

be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(25).[2]

All filings in response to this notice must refer to STB Docket No. AB–364 (Sub-No. 10X), and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before August 8, 2005.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 12, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–14099 Filed 7–15–05; 8:45 am]

BILLING CODE 4915–01–P

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required under 49 CFR 1105.6(c) and 1105.8.

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption: 12¾ Percent Treasury Bonds of 2005–10

1. As of July 15, 2005, public notice is hereby given that all outstanding 12¾ percent Treasury Bonds of 2005–10 (CUSIP No. 912810 CS 5) dated November 17, 1980, due November 15, 2010, are hereby called for redemption at par on November 15, 2005, on which date interest on such bonds will cease.

2. Full information regarding the presentation and surrender of such bonds held in coupon and registered form for redemption under this call will be found in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR part 306), and from the Definitives Section of the Bureau of the Public Debt (telephone (304) 480–7936), and on the Bureau of the Public Debt's Web site, *http://www.publicdebt.treas.gov.*

3. Redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in Treasury-Direct accounts, will be made automatically on November 15, 2005.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 05–13844 Filed 7–15–05; 8:45 am]

BILLING CODE 4810–40–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–121063–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–121063–97 (TD 8972), Averaging of Farm Income (§ 1.1301–1).

DATES: Written comments should be received on or before September 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Averaging of Farm Income.

OMB Number: 1545–1662.

Form Number: REG–121063–97 (Final).

Abstract: Section 1301 of the Internal Revenue Code allows an individual engaged in a farming business to elect to reduce his or her regular tax liability by treating all or a portion of the current year's farming income as if it had been earned in equal proportions over the prior three years. To take advantage of income averaging, § 1301 requires that the taxpayer calculate the § 1 tax using the three prior year's tax tables and, if applicable, Schedule D, Capital Gains and Losses, (to apply the maximum capital gains tax rates), as well as the current year's tax tables or tax rate schedules. The regulation requires the taxpayer to use Schedule J of Form 1040 to record and total the amount of tax for each year of the four year calculation.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of a currently approved collection.

The burden for this requirement is reflected in the burden estimate for Schedule J of Form 1040.

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: July 12, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3781 Filed 7–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–44

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 Notice 2005–44, Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes.

DATES: Written comments should be received on or before September 16, 2005 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 notice 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:* Charitable Contributions of Certain Motor Vehicles, Boats, and Airplanes.

OMB Number: 1545–1942.

Notice Number: Notice 2005–44.

Abstract: This notice provides guidance regarding how to determine the amount of a charitable contribution for certain vehicles and the related substantiation and information reporting requirements.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved new collection.

Affected Public: Individual or households and not-for-profit institutions.

Estimated Number of Respondents: 182,500.

Estimated Average Time Per Respondent: 1 min.

Estimated Total Annual Burden Hours: 3,041.

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: July 11, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3782 Filed 7–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–150313–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulations, REG–150313–01, Redemptions Taxable as Dividends.

DATES: Written comments should be received on or before September 16, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Redemptions Taxable as Dividends.

OMB Number: 1545–1811.

Regulation Project Number: REG–150313–01.

Abstract: This information is necessary to ensure that the redeemed shareholder's suspended basis account is properly taken into account as a loss under the Code or regulations to the extent of the lesser of the amount of the suspended basis account or the gain recognized upon a disposition of other stock in the redeeming corporation.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,500.

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: July 11, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3783 Filed 7–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2005–40

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 Notice 2005–40, Election to Defer Net Experience Loss in a Multiemployer Plan.

DATES: Written comments should be received on or before September 16, 2005 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, notice 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: Election to Defer Net Experience Loss in a Multiemployer Plan.

OMB Number: 1545–1935.

Notice Number: Notice 2005–40.

Abstract: This notice describes the election that must be filed by an eligible multiemployer plan's enrolled actuary to the Service in order to defer a net experience loss. The notice also describes the notification that must be given to plan participants and beneficiaries, to labor organizations, to contributing employers and to the Pension Benefit Guaranty Corporation within 30 days of making an election with the Service and the certification that must be filed if a restricted amendment is adopted.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved new collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 12.

Estimated Average Time per Respondent: 80 hours.

Estimated Total Annual Burden Hours: 960.

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: July 11, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–3784 Filed 7–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Computer Matching Program Between the Department of Veterans Affairs (VA) and the Social Security Administration (SSA)

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer match program.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Social Security Administration (SSA) to verify self-reported household income information for veterans whose eligibility for VA medical care is based on income levels.

Legal Authority: The authority for this matching program is contained in 38 U.S.C. section 5317, 38 U.S.C. 5106, and 26 U.S.C. 6103(l)(7)(D)(viii).

Purpose: The purpose of this match is to obtain SSA earned income information data needed for the income verification process.

Records To Be Matched: The VA records involved in the match are ''Health Eligibility Center (HEC) Records'' (89VA19). The SSA records are from the Earning Recording and Self Employment Income System, SSA/OEEAS 09–60–0059.

DATES: This match will start no sooner than 30 days after publication in the **Federal Register**, and end not more than 18 months later unless extended for 12 months in accordance with law.

ADDRESSES: Written comments may be submitted by mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VARegulations@mail.va.gov*; or, through *http://www.Regulations.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Janet Ficco, Associate Director, Income

Verification Division, Health Eligibility Center, (404) 235–1340.

SUPPLEMENTARY INFORMATION: A copy of this notice has been sent to the appropriate Committees of both Houses of Congress and to the Office of Management and Budget. This information is required by Title 5 U.S.C. 552a(e)(12).

Report of Matching Program

a. *Names of participating agencies:* Department of Veterans Affairs and the Social Security Administration.

b. *Program description:*

(1) *Purpose:* The Department of Veterans Affairs (VA), Veterans Health Administration (VHA), plans to match the household income information contained in the records of certain nonservice-connected veterans and zero percent service-connected (noncompensable) veterans with the income records for those persons maintained by the Social Security Administration (SSA). Veterans subject to income verification matching are those veterans who are receiving VA medical care whose eligibility is based on income level.

Information about a veteran's household income (*i.e.*, veteran, spouse, and dependents) is obtained when the veteran makes application for medical care. This information is necessary to determine whether the veteran's attributable income is below the established inability to defray medical care copayment threshold, thus enabling the veteran to receive cost free medical care. The proposed matching program will enable VA to verify a veteran's household income information and thereby more accurately determine his/her eligibility for medical care.

(2) *Procedures:* The Health Eligibility Center (HEC) will prepare an extract file on nonservice-connected veterans and zero percent service connected (noncompensable) veterans whose attributable income is below the established income threshold. This HEC file will be matched against SSA records of earned income. When the returned data indicates that a veteran's income is above the established threshold HEC will initiate an extensive case development and verification process. HEC will make every reasonable attempt to verify identified discrepancies from the match directly with the veteran and/or spouse. Additionally, the veteran will be advised of the potential changes to his/her medical care eligibility, and the potential billing actions for copayments. When unable to verify income with veteran/spouse HEC will conduct independent verification with the payer(s) of the reported income. Before any adverse action is taken, the individual(s) identified by the match will be given the opportunity to contest the findings. Where there are reasonable grounds to believe that there has been a violation of criminal laws, the matter will be referred for prosecution consideration in accordance with existing VA policies.

c. *Authority:* Title 38, U.S.C. sections 5106 and 5317 and 26 U.S.C. section 6103 (l)(7)(D)(viii).

d. *Records to be matched:* The VA records involved in the match are ''Health Eligibility Center Records'' (89VA19). The SSA records are from the Earnings Recording and Self-Employment Income System, SSA/OEEAS 09–60–0059.

e. *Period of match:* The initial date exchanges are expected to begin 40 days after the matching agreements are signed by the Data Integrity Boards and Congressional and Office of Management and Budget notification, and 30 days from the date of publication of notice in the **Federal Register** or 40 days from the date of this notice is approved, whichever is later.

Approved: June 30, 2005.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

[FR Doc. E5–3808 Filed 7–15–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 70, No. 136

Tuesday, July 18, 2005

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 HOMELAND SECURITY

Coast Guard

46 CFR Chapter I

[USCG–2005–20052]

Potable Water on Inspected Vessels

Correction

In proposed rule document 05–13074 beginning on page 39699 in the issue of Monday July 11, 2005, make the following correction:

On page 39699, in the first column, the CFR title heading is corrected to read as set forth above.

[FR Doc. C5–13074 Filed 7–15–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 18, 2005

Part II

Department of Agriculture

Rural Business-Cooperative Service
Rural Utilities Service

7 CFR Part 4280
Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4280

RIN 0570–AA50

Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program

AGENCY: Rural Business-Cooperative Services, USDA.

ACTION: Final rule.

SUMMARY: The Rural Business-Cooperative Service (RBS) is establishing a program for making grants, loan guarantees, and direct loans to farmers and ranchers (agricultural producers) or rural small businesses to purchase renewable energy systems and make energy efficiency improvements. The Farm Security and Rural Investment Act of 2002 (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006. This program will help farmers, ranchers, and rural small businesses to reduce energy costs and consumption.

EFFECTIVE DATE: This rule is effective July 18, 2005.

FOR FURTHER INFORMATION CONTACT: Georg A. Shultz, Special Advisor for Renewable Energy Policy and Programs, Office of the Deputy Administrator Business Programs, U.S. Department of Agriculture, Mail Stop 3220, 1400 Independence Ave., SW., Washington, DC 20250–3220, Telephone: (202) 720–2976.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes Since Proposal
A. Applicant Eligibility
B. Project Eligibility
C. Funding, Matching Funds, and Terms of Loan
D. Eligible Project Costs
E. Application
F. Documentation
G. Evaluation of Applications
H. Guaranteed Loan Processing and Servicing
I. Construction Planning and Development
J. Definitions
K. Insurance
L. Feasibility Studies
M. Energy Audits
N. Project Requirements After Construction
IV. Discussion of Comments
A. Definitions
B. Demonstrated Financial Need
C. Applicant Eligibility
D. Project Eligibility
E. Application and Documentation
F. Funding
G. Evaluation/Scoring of Applications
H. Guaranteed Loans
I. Direct Loans
J. Laws That Contain Other Compliance Requirements
K. Construction Funding and Management
L. Miscellaneous
V. Regulatory Information
A. Paperwork Reduction Act
B. Intergovernmental Review
C. Regulatory Flexibility Act
D. Civil Justice Reform
E. National Environmental Policy Act
F. Unfunded Mandates Reform Act
G. Executive Order 13132, Federalism
H. Executive Order 12866, Regulatory Planning and Review

I. Authority

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Act) established the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006 (7 U.S.C. 8106). The 2002 Act mandates that the Secretary of Agriculture create a program to make loans, loan guarantees, and grants to ''a farmer, rancher, or rural small business'' to purchase renewable energy systems and make energy efficiency improvements. This program implements this mandate.

II. Background

On October 5, 2004, USDA proposed a loan and grant program for renewable energy systems and energy efficiency improvements under Section 9006 of the 2002 Farm Bill.

In response to the Nation's immediate need for a reduction in reliance on foreign oil, and to address the increasing demand for readily available energy, the Agency is waiving the 30-day waiting period between publication of the rule and when it will take effect. Since publication of the proposed rule, energy prices have continued to rise at an aggressive rate, affecting the Nation at every level, due to international events, increasing demand, and low domestic inventories and refinery capacities. Allowing the earliest possible investment in renewable energy production systems and energy efficiency improvements will help the Nation address the current situation. Effecting the rule without the 30-day waiting period will provide maximum application time prior to the end of the fiscal year to ensure the greatest level of investment possible.

The 9006 Grant Program has been operational since the 2003 fiscal year and the final rule makes only minor changes to the proposed rule and how the 9006 Grant Program has been operated before. As a result, grant applications are not expected to be disadvantaged by this rule's earlier implementation. Likewise, because the 9006 Guaranteed Loan Program is substantially modeled after the Business and Industry Guaranteed Loan Program and because the Final Rule makes only minor changes to the Proposed Rule, guaranteed loan applications are not expected to be disadvantaged by this rule's earlier implementation.

For these reasons, the Agency finds that good cause exists for this rule's immediate implementation.

III. Summary of Changes Since Proposal

The following paragraphs summarize the major changes in the final rule from the rule proposed on October 5, 2004.

A. Applicant Eligibility

Under the final rule, a provision has been added that an applicant must have made satisfactory progress, as determined by the Agency, towards the completion of a previously funded project before it will be considered for subsequent funding.

Small business headquarters may be in either a rural or non-rural area at the time of application and at the time of grant disbursement. Because the headquarters may be in either location, the proposed rule does not need to address this.

B. Project Eligibility

A condition has been added to project eligibility that sites must be controlled by the agricultural producer or small business for the proposed financing term of any associated Federal loans or loan guarantees. This concept was in the proposed rule as part of the technical report requirements. The language has been modified concerning control of the system and the role of third parties for clarification, and concerning satisfactory sources of revenues.

For guaranteed loans only, we have added capital improvements to an existing renewable energy system as an eligible project.

C. Funding, Matching Funds, and Terms of Loan

Minimum Funding Levels. Under the final rule, minimum funding level for grants for energy efficiency improvement projects only has been reduced from $2,500 to $1,500. For guaranteed loans, the minimum funding level for all projects has been increased from $2,500 to $5,000 (less any program grant amounts).

Maximum Funding Levels. For grants, the final rule clarifies that the $750,000 maximum applied on a per Federal fiscal year basis.

Matching funds. Under the final rule, passive third-party contributions are acceptable matching funds for renewable energy system projects eligible for Federal production tax credits, provided the applicant meets the applicant eligibility requirements. The proposed rule did not address passive third-party contributions.

Terms of Loan. The maximum term of a loan for equipment has been increased from 15 years to 20 years.

The conditions used to determine whether a loan is sound have been modified to add renewable energy subsidies, incentives, tax credits, etc., and the borrower's overall credit quality.

A principal plus interest repayment schedule is now permissible.

D. Eligible Project Costs

The final rule includes the Technical Reports as an eligible cost. Modifications were made concerning the construction of a new facility.

E. Application

Simplified Application Procedures. Under the final rule, for grants and direct loans, projects with total eligible project costs of $200,000 or less are eligible to submit simplified applications. The final rule provides specific criteria to determine if a project is eligible and certain conditions that must be agreed to by the applicant.

For guaranteed loans, the final rule adopts the ''short form'' (Form RD 4279–1A) used in the Business and Industry Guaranteed Loan (B&I) Program. This form can be used by lenders for projects with total eligible project costs equal to or less than $600,000.

Self-Scoring. Applicants are now required to conduct a self-evaluation of their project using the same evaluation criteria that the Agency will use.

F. Documentation

Technical Reports. The final rule incorporates a new set of technical reports for projects that qualify for simplified applications (see paragraph III E). These technical reports require less information than the technical reports presented in the proposed rule. For projects that do not qualify for simplified applications, the more detailed technical reports are required.

Financial Information. For projects that qualify for and use simplified applications, there is much less financial information being requested.

Interconnection Agreements. Applicants are not required to submit interconnection agreements with their applications, but instead are required to discuss the interconnection agreements, if applicable to their project.

G. Evaluation of Applications

Significant changes were made to the evaluation of applications. These changes can be categorized as changes in the evaluation criteria and changes in the points awarded. The overall scoring was also modified to allow all projects the opportunity to score the same total number of points. The following summarizes most of the changes to the criteria between proposal and promulgation (changes in points are not presented for most criteria).

1. The addition of a scoring criterion for the technical merit of proposed projects.
2. The deletion of the management criterion.
3. The addition of a scoring criterion for very small businesses.
4. Modification of the criterion for small agricultural producers by reducing the gross market values at which points can be awarded.
5. The addition of a scoring criterion for submitting simplified applications.
6. Modification of the environmental benefits criterion by replacing ''health and sanitation'' with ''environmental goals'' as the basis for this criterion.
7. The deletion of the cost-effectiveness criterion, which was incorporated into the new technical merit criterion.
8. Awarding points for energy replacement, energy savings, or energy generation (at proposal, only energy replacement and energy generation were included) and by reducing the points available for energy generation projects from 20 to 10.
9. Modifying the interest rate criterion to be consistent with the B&I program by reducing the rate from 1.75 percent to 1.5 percent above the prime rate.
10. The addition of a scoring criterion that awards 5 points to an applicant's overall score if the applicant has not been approved to receive funds in the 2 previous Federal fiscal years.
11. The replacement of the ''matching funds'' criterion for grants with a ''readiness'' criterion, which looks at the commitments an applicant has received for the matching funds from other sources instead of the amount of the matching funds already received from other sources.

H. Guaranteed Loan Processing and Servicing

For guaranteed loans, the final rule tracks the B&I program more closely. The most important aspects that have changed are: (1) Expanding the universe of eligible lenders and (2) authorizing the use of multi-notes. Other changes included:

Credit Quality. A provision has been added that guaranteed loans made under 7 CFR part 4280, subpart B must have at least parity with guaranteed loans made under the B&I program.

In addition, a provision has been added that the current status of the appropriate renewable energy industry will be considered.

Personal and Corporate Guarantees. Under the final rule, personal and corporate guarantees are not required from passive investors.

I. Construction Planning and Development

In the final rule, 7 CFR 1924, subpart A has been replaced with 7 CFR 1780, subpart C. Similarly, for equipment procurement, 7 CFR 1924, subpart A has been replaced with 7 CFR 3015.

J. Definitions

Small Business. Several changes and modifications were made to this definition to be consistent with the Small Business Administration's (SBA's) definition, deleting the 500 or fewer employees and $20 million or less in total annual receipts cap, and including certain electric utilities. Nonprofit entities that meet SBA's definition of ''small business'' are now allowed.

Demonstrated Financial Need. The major change to this definition was the addition of a ''cashflow'' test.

New Definitions. The final rule adds definitions for each of the renewable technologies and the following terms:

Design/build project development method.
Energy assessment.
Energy assessor.
Energy auditor.
Feasibility study.
Necessary capital improvement.
Passive investor.
Post application.
Qualified consultant.
Qualified party.
Simplified application.
Used equipment.
Very small business.

Modified Definitions. The definitions of some terms were modified slightly to be consistent with the definition for those terms in the B&I program. Definitions that were modified include:

Applicant.
Commercially available.
Energy efficiency improvement.
Interim financing.
Renewable energy.

Renewable energy system.

Deleted Definitions. Several definitions that were identical to the definitions in the B&I program were deleted and are incorporated by reference.

K. Insurance

Projects with total eligible project costs of $200,000 or less are not required to carry business insurance.

L. Feasibility Studies

Under the proposed rule, business-level feasibility studies (referred to as project-specific feasibility studies in the proposed rule) were required for all renewable energy projects exceeding $100,000 in costs. Under the final rule, business-level feasibility studies for renewable energy projects will be required for those projects whose total eligible project costs are greater than $200,000.

M. Energy Audits

Under the proposed rule, energy audits were required for energy efficiency improvement projects with costs greater than $100,000. Under the final rule, energy audits are required for energy efficiency improvement projects with total eligible energy costs greater than $50,000.

IV. Discussion of Comments

Over 60 comment letters were received from a variety of commenters. The most comment letters were received from various trade organizations and industry groups (over 15 letters) and from State agencies and organizations (over 15 letters). Various public interest groups submitted approximately 11 letters, while financial institutions (credit bureaus and banks) submitted 8 letters. Letters were also received from private individuals, towns and cities, and one Congressman.

The following paragraphs summarize the comments and our responses to those comments. Twenty-one responses do not require a response under 5 U.S.C. 553. These responses involve various nonregulatory matters such as expressing support for the program or requesting additional information. Several responses were outside the scope of the regulation and made suggestions that would require changes to other USDA and non-USDA regulations or internal agency administrative matters. For these and similar reasons, these responses are not addressed in this section.

A. Definitions

Applicant

Comment: One commenter stated that the definition of applicant does not include a reference to direct loan applicants and suggested that the definition be amended to include such a reference.

Response: USDA agrees with the commenter and has revised the definition to include reference to direct loan applicants.

In addition, we have revised the term ''applicant'' to apply to agricultural producers and rural small businesses seeking a guaranteed loan rather than to the lender that is actually submitting the loan application to USDA. We did this in order to simplify the terminology throughout the rule. Thus, wherever the term ''applicant'' is used, it is referring to the agricultural producer or rural small business. When the rule applies to the lender, the term ''lender'' is used.

Biomass

Comment: One commenter stated that the definition of biomass needs to be clarified. The commenter pointed out that the biomass definition refers to ''other waste materials.'' The commenter notes that, traditionally, municipal waste for landfill waste has been included in biomass definitions. The commenter believes that, if tires are allowed to be placed in a landfill, they may be deemed municipal waste, biomass, and inevitably renewable. This theory, according to the commenter, appears to be reinforced in the Resource Conservation and Recovery Act of 1976. In addition, the commenter points out that the State of Nevada, Nevada Revised Statute Chapter 704, has classified tires reduced using microwave technology, a very clean process, as renewable because they are part of the municipal waste stream and also because one of the components of all tires is natural rubber coming from trees. The commenter suggests that an administrative bulletin to staff, clarifying the intent of the biomass definition, is needed.

Response: USDA agrees that ''other waste materials'' could lead to confusion. However, due to the nature, scope, and complexity of renewable energy systems using ''other waste materials,'' USDA cannot anticipate all types of ''other waste materials.'' Therefore, new materials and technologies will be considered on a case-by-case basis.

Comment: One commenter requested that clarification be provided as to the interpretation of ''paper that is not commonly recycled.'' The commenter stated that, while they want all paper to be recycled that can be recycled, in many rural settings transportation distances to paper recycling purchase points are simply too distant to allow affordable recycling once transportation costs are figured into the equation. The commenter stated that they have evidence in Missouri of how paper pellets can be beneficially utilized as fuel at Northwest Missouri State University but cannot be affordably recycled due to the distance to any buying center. The commenter asked that USDA clarify that if transportation economics preclude affordable recycling of waste paper that this meets the criteria of ''not commonly recycled.''

Response: USDA agrees that the situation posed by the commenter should meet the criterion of ''not commonly recycled.'' The situation described arises, at least in part, out of the fact that the paper recycling is occurring in a rural area. USDA will consider this issue on a case-by-case basis.

Capacity

Comment: One commenter stated the definition of capacity is technically incorrect (load implies use not production of energy *e.g.*, the electric motor is a three kilowatt load on the system). Capacity should describe energy output in a standard measurement (*e.g.*, British thermal units (BTU's), kilowatt-hours (kWh), Megawatts). The commenter suggested that it be defined as follows:

''The sustainable energy output of a generation or heating unit as rated by the manufacturer or qualified independent energy organization or individual using commonly accepted standard units of measurement.''

Response: The commenter makes three suggestions for revising the definition of ''capacity'' as follows:

First, the commenter suggests that capacity be described as ''energy output'' and not as ''load.'' USDA disagrees with this suggestion. Load is equally applicable as ''energy output.'' Thus, this term has not been changed.

Second, the commenter suggests that the definition should require capacity to express using ''commonly accepted standard units of measurement.'' USDA disagrees with the need to insert this language into the definition. USDA believes that manufacturer ratings will be in the same units of measurement for similar technologies. If not, conversions can be applied.

Third, the commenter suggests that the energy output can also be rated by a ''qualified independent energy organization or individual.'' USDA

disagrees with the third suggestion. The ratings assigned by a manufacturer are based on standards and provide a standardized, consistent baseline for comparisons. Some units eligible for this program could be modified by an individual after purchase to change its rating. In such instances, an individual would likely hire a third party to assign a new rating to the unit. USDA does not believe this is a desirable situation, possibly resulting in subjective assessments of the rating.

Default

Comment: Two commenters pointed out that there is no reference made to grants being in default, and one of the commenters (Flanders 11–04) suggested that ''or grant conditions'' be inserted after ''* * * or more loan covenants * * *'' in the third line of the definition.

Response: USDA agrees with the commenter and has revised the definition of default as suggested.

Demonstrated Financial Need

Comment: One commenter suggested that the definition of demonstrated financial need might benefit from a more specific definition or an example—for example, ''if the project is otherwise unable to achieve at least a 1.20 debt coverage ratio when a loan for the long term liability portion is amortized over the life expectancy of the project.''

Response: USDA disagrees that a more specific definition is needed within the rule. The example offered by the commenter is one way for demonstrating financial need as defined by the regulation.

Energy Efficiency Improvement

Comment: One commenter pointed out that in the definitions section of the proposed rule, ''energy efficiency improvement'' is defined as ''Improvement to a facility or process that reduces energy consumption.'' The commenter then points out that under proposed § 4280.111(d)(10), the definition is expanded to include, ''or reduced amount of energy required per unit of production are regarded as energy efficiency projects.'' The commenter suggested that the definition under proposed § 4280.103 be expanded to include this concept found in proposed § 4280.111(d)(10).

Response: USDA has not revised the definition as requested by the commenter. We have retained the phrase ''that reduces energy consumption,'' which allows an applicant to express the reduction in energy consumption in a number of ways, including, but not necessarily limited to total reduction in energy consumption, energy saved per square foot or energy saved per unit of production.

Comment: One commenter stated that the definition of energy efficiency improvement is not explicit enough and recommended that USDA add language to the existing definition that clarifies that the primary benefit for the improvement must be a reduction in energy consumption. According to the commenter, some applications in 2004 relied on nonenergy benefits, such as increased product quality, as the justification for the project. For some projects, the energy efficiency savings were clearly a secondary benefit and would not have had sufficient payback to pursue on their own. While these additional benefits are valuable and should be factored into the project finances, when nonenergy benefits are the primary benefit of a proposed project, the commenter believes that such projects should not be considered an energy efficiency improvement.

Response: USDA believes that no change is necessary; this issue is addressed in the scoring criteria. Projects saving the most energy will score higher. Therefore, USDA expects the primary benefit of the energy efficiency improvement program will be energy reduction.

Existing Lender Debt

Comment: One commenter asked: What if the same lender had an existing debt to the borrower with a B&I loan guarantee? The commenter suggested striking ''not guaranteed by the Agency'' from the definition of ''existing lender debt.''

Response: The definition of ''existing lender debt'' was removed from this rule because it was not used.

Holder

Comment: One commenter asked: What about in the case where more than the guaranteed portion of the loan is sold to a holder? The commenter suggested striking ''all or'' leave the word part and strike ''of the guaranteed portion.''

Response: As proposed, ''holder'' was defined as ''A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan, with no servicing responsibilities.'' USDA disagrees that the definition of ''holder'' needs to be revised because only the guaranteed portion of the loan can be sold to a holder; that is, one cannot sell ''more than the guaranteed portion of the loan'' to a holder.

''In-Kind Contributions''

Comment: One commenter suggested that use of existing towers, such as cell phone relay towers, to support wind generators be allowed if the towers are certified to be safe and sturdy enough to support the chosen generator by a professional engineer. The commenter suggested that this could be a standard and specification detail rather than a rule component, but that it needs to be allowed.

Response: USDA does not believe any change is needed to the rule to address the situation posed by the commenter. As written, the rule allows the use of existing towers as an in-kind contribution if they ''directly benefit the project.''

Interim Financing

Comment: One commenter stated that the words ''clear intent'' in the definition of ''interim financing'' in the proposed rule are vague and suggested striking ''clear intent'' and substituting the words ''commitment from a lender that.''

Response: USDA disagrees with the commenter's suggestion and has not revised the definition as suggested by the commenter. USDA believes applicants need flexibility in showing they have permanent financing, and applicants should not be limited to lender commitments. Further, USDA does not wish to limit the concept of interim financing to ''lenders.''

Loan-to-Value

Comment: One commenter stated that the definition of loan-to-value is not consistent with standard industry language and recommended that the term be changed to be consistent. The commenter suggested substituting the term ''Loan-to-value'' with ''Loan to discounted value'' and then revising the content of the proposed rule to substitute ''Loan-to-value'' with ''Loan to discounted value.''

Response: The Agency agrees with the commenter that the rule needs to refer to ''discounted value'' and has incorporated this change by revising the definition of ''loan-to-value'' accordingly. However, the Agency disagrees that the term should be ''Loan to discounted value,'' and has retained the term ''loan to value.''

Renewable Energy

Comment: One commenter suggested adding the word ''biomass'' into the second clause so that it reads ''* * * or hydrogen derived from biomass or water using wind, solar, biomass, or geothermal energy sources.''

Response: USDA agrees with the commenter that the word ''biomass'' needs to be added and has revised the definition for renewable energy as suggested. The lack of the word in the proposed rule was an oversight.

Comment: One commenter asked if the Agency would recognize as ''renewable energy'' that generated from conversion of a renewable fuel into heat, electricity, and/or mechanical power.

Response: Yes, USDA would recognize as ''renewable'' energy generated from the conversion of a renewable fuel into heat, electricity, or mechanical power. USDA revised the definition of ''renewable energy system'' to read as follows: A system that produces or produces and delivers usable energy from a renewable energy source. We believe this revision specifically addresses the commenter's question.

Comment: One commenter asked if a project that manufactures biofuels (biodiesel, ethanol, etc.) from various forms of biomass is eligible, or must that project include energy generation from that renewable fuel to qualify. This commenter also asked if existing on-site energy generation technologies are converted to biofuel usage from diesel or other nonrenewable fuel use, either in part or completely, would this conversion be considered an acceptable ''renewable energy project?''

Response: A project that solely manufactures biofuels from various forms of biomass is eligible under this program. The project does not need to generate energy.

The conversion of existing on-site energy generation technologies to biofuel from diesel or other non-renewable fuel qualifies as a renewable energy project for the purposes of the 9006 program. USDA points out that for purposes of determining the amount of funds available for such conversion, total eligible project costs would be based on the cost of performing the conversion alone, not on the cost of an equivalent replacement unit.

Comment: One commenter asked if a project that qualifies at the State level as ''renewable'', would automatically be acceptable, based on the state-level determination, for meeting minimum eligibility requirements for Agency support. Conversely, the commenter asked, if mandated compliance with State and local permitting (as a nonrenewable project) would obviate Agency funding if a project is not considered renewable under State guidelines but that project satisfies the criteria in this program.

Response: A State-level determination alone would not be acceptable to qualify a project as ''renewable'' under this program. To be judged renewable under this program, the project must meet the requirements of this program.

Any project that is deemed a renewable project under this program is eligible to receive funding under this program regardless of how a State defines the project (*i.e.*, as a nonrenewable project), but the project still must be in compliance with all applicable State and local permitting requirements for that project regardless of how it is defined.

Comment: One commenter noted that State rules permit various maximum percentages (usually around 25 percent) of nonrenewable fuel that can be used to augment and ''firm'' energy generation from renewable sources and asked how this would impact Agency assessment of a proposal. The commenter then asked how a prospective applicant or borrower can ascertain this status prior to commitment of resources.

Response: USDA understands the commenter's position and is amenable to considering such projects for funding under this program. However, the Agency has decided not to revise the rule, but instead will evaluate each proposed project on a case-by-case basis. This will maximize the number of eligible projects the Agency can consider. USDA will rely on the expertise of the technical experts who review the applications to make the determination as to whether the project qualifies as ''renewable'' under this program. This review will evaluate the actual renewable energy usage, energy displacement, and energy saving, as applicable.

Small Business

Comment: A number of commenters suggested making several revisions to the definition of small business. Four commenters suggested that the definition be changed so that the cap of $20 million in annual receipts is removed and a small business is defined only by the number of employees of 500 or less. Two of these commenters believe the $20 million maximum in annual receipts disqualifies and discourages many grain elevators, ethanol producers, biodiesel producers, and other possible business ventures in rural America.

The third commenter stated that the definition of small business provided in the rule was duplicative with SBA guidelines and offered a one-size-fits-all dimension to the program. According to this commenter, this penalizes certain small businesses that meet SBA definitions, but not the specific limits outlined in this definition. The commenter was particularly concerned that Rural Electric Cooperatives would be excluded from participation in the program.

Finally, the fourth commenter stated that capping the annual revenues at $20 million would eliminate the eligibility of a significant number of companies who could benefit and provide substantial value to the renewable energy program, in particular the ethanol industry. The commenter states that the ethanol industry provides benefits on many fronts and should be allowed to participate in the 9006 program, but the cap would exclude this industry because the majority of plants are in excess of this sales limitation.

A fifth commenter recommended that USDA expand eligibility to allow all rural electric utilities to host applications. This commenter pointed out that many rural electric cooperatives and public utility districts fail to meet eligibility requirements because of large annual receipts, even though their profit margins are small and stated that rural utilities are important partners and should be eligible applicants.

Two commenters suggested that more explanation as to the definition of an eligible cooperative is needed. One of these commenters stated that referring to the IRS code is not quick helpful information when prospective applicants are trying to figure out whether they are eligible or not. The other commenter requested more description of what type of cooperative is eligible ''perhaps in the definition portion of the proposed regulations.

Response: USDA agrees that the definition of ''small business'' needs to be revised. USDA believes that the definition needs to be consistent with SBA's definition and by doing so, the revised definition simplifies the application process and eligibility determination, provides for greater consistency in eligibility determinations, and increases program access. Therefore, USDA has revised the definition to remove the caps on annual receipts and on the number of employees.

In addition, USDA has revised the definition to specifically include electric utilities, including Tribal or governmental electric utilities, that provide services to rural consumers on a cost-of-service basis, without support from public funds or subsidy from the Government authority establishing the district, provided that such utilities meet SBA's definition of small business.

Also, the purpose of the parenthetical reference to the IRS code was to minimize the number of questions as to

whether cooperatives qualified under section 501(c)(12) (of the Internal Revenue Code) were eligible for this program (which they are), not to limit this program to only those cooperatives qualified under section 501(c)(12). USDA does not believe that it is necessary to remove the reference to the IRS code, because a cooperative would know if the referenced IRS code applied to it or not. Therefore, we have elected not to remove reference to the IRS code.

Lastly, USDA disagrees that more description of the type of cooperative is needed, especially in light of the revision to the definition of small business, which allows any cooperative to be eligible as long as it meets the definition of a small business.

Comment: One commenter recommended that the receipt and employee ''size'' threshold be applied only to the location being served by the project.

Response: As discussed in the response to the previous comment, USDA has revised the definition of small business to remove the ''size'' threshold. Thus, this comment is now moot.

Qualified Consultant

Comment: One commenter noted that there is no definition for ''qualified consultant.'' The commenter recommended that a ''qualified consultant'' should be established as a party that has demonstrated with past efforts the ability to compile not only a project assessment but also a comprehensive business model and plan for execution.

Response: USDA agrees that a definition of ''qualified consultant'' is needed and has added it to the definitions section.

B. Demonstrated Financial Need

Funding From Other Sources

Comment: A number of commenters were concerned that including the phrase ''other funding sources'' in the definition of ''demonstrated financial need'' would disqualify applicants who can obtain funding elsewhere. One of the commenters recommended that the definition of demonstrated financial need be altered to make clear that State financial assistance for renewable energy systems or energy efficiency improvements will not affect an applicant's eligibility for the 9006 program.

Another commenter stated that the proposed definition appears to disqualify applicants who would combine funding from the 9006 program with private and public loan programs.

One commenter recommended that State program co-funding, such as State Clean Energy Trust Funds, should be encouraged by USDA, and not disallowed.

Response: While USDA does not disagree with the commenters' concerns, we have retained essentially the same concept in the final rule. Specifically, we have replaced the phrase ''or other funding sources'' with ''and commercially available resources.'' The final definition adopted in the rule is in alignment with other Rural Development programs, which have a ''credit elsewhere'' test. Section 9006(b) requires a demonstration of financial need.

Comment: One commenter stated that, although requirements for in-kind contributions were reasonable, strictures against any other Federal co-funding could restrict applications. The commenter observed that an applicant could receive funding from Federal sources other than USDA. Rather than impose a blanket ban on other Federal funding, the commenter recommended that USDA develop a specific list of programmatic funding exclusions. Four other commenters suggested that co-funding from State rebate programs be fully allowed. Another commenter stated that USDA should allow full co-funding from State public benefit rebate programs.

Response: USDA made an administrative determination that the 25 percent limit for grant funding of a project is applicable to funds received under the 9006 program and all other Federal grants, unless there is statutory authorization permitting the other Federal funding to be used for the grantee's match. No changes have been made in the final program.

Financial Need

Comment: One commenter stated that the requirement to demonstrate financial need creates a possible catch-22 for applicants. On the one hand, USDA is seeking to safeguard the public's money by requesting significant assurances that every grant project will be financially viable, yet also requires the applicant to prove financial need. When the grant amount is capped at 25 percent (by law), this creates a rather thin margin to work within. The commenter stated that the grant program should be looked at as analogous to soil conservation cost-share programs where the grant amount is a public provision of assistance to a participant for assuming the risk inherent in adopting a new, and in some cases, early commercial and site specific technology. For this reason, the proof of demonstrated financial need should be understood to include the credibility that government support of a new business investment provides to lenders who would not otherwise provide needed gap financing.

Response: USDA in general concurs with the commenter. It is our hope that by our willingness to fund projects that have undergone and passed the technical review under the 9006 program would, in turn, encourage lenders to see these projects as worthwhile projects, as well and extend funding to them. Further, the change made to the definition of ''demonstrated financial need'' that focuses on the need of the project should help address the concerns raised in this comment.

Comment: One commenter stated that the demonstration of a financial need should not be a threshold factor for applicant eligibility to participate in this program. According to the commenter, this provision anticipates an applicant that cannot afford the project without the assistance, yet it requires a highly engineered project. If an applicant must demonstrate a financial need as defined, the possibility of assembling the highly technical application diminishes.

Response: USDA does not have the discretion to remove the demonstration of financial need as a requirement for receiving a grant under the 9006 program; this is a statutory requirement in section 9006(b). However, USDA has significantly lowered the application requirements for projects with total eligible project costs of $200,000 or less, which significantly reduces the amount of financial information that would be required and by developing less detailed requirements for the Technical Report (see Appendix A). Further, the Agency has added a second component to the definition of ''demonstrated financial need'' that focuses on the need of the project. Therefore, we have addressed this commenter's concerns as much as possible.

Project Versus Applicant Financial Need

Comment: One commenter observed that the proposed rule defines financial need as an applicant's need rather than a project's need, and felt that this wording would penalize applicants with good credit or assets. The commenter recommended that USDA redefine ''demonstrated financial need'' to something like the following: ''The demonstration that the project is not economic or would not occur without the grant assistance.''

Another commenter stated that there is confusion as to whether ''financial need'' refers to the proposed project or

to the actual assets of the applicant. The commenter recommended that this eligibility criteria be clarified and suggested that financial need be determined by looking at the project itself. According to the commenter, the relevant question is whether a grant is necessary to make this project financially feasible and/or successful. In the current language, the commenter asserts that it is unclear whether applicants with sound personal credit and financial portfolios will be penalized or deemed ineligible. The commenter believes that projects where the participants have sound financial histories are more likely to succeed and should not be put at a disadvantage.

Response: The Agency has adopted this suggestion by modifying the definition of ''demonstrated financial need.''

Comment: Five commenters suggested that USDA base financial need criteria on project payback, not the applicant's financial resources and liquidity. If the 9006 grant will materially reduce the project payback period and similar projects are not commonplace in the applicant's area, the commenter believes there is a de facto financial need. One commenter stated that this seems inconsistent with the overall intent of the program, and favors larger scale projects.

Response: USDA disagrees that project payback is a proper criterion for determining financial need. The definition, as proposed, was consistent with USDA policy for a ''credit elsewhere'' test. Maintaining the same definition across its programs simplifies cross-program requirements easing the burden for program participants and end users and establishes a clear, consistent, and objective standard for demonstrating a financial need for Rural Development grant assistance. Therefore, USDA has not incorporated the commenters' suggestion.

In addition, USDA has revised the definition of ''demonstrated financial need'' to include ''that the project proposed by the applicant cannot achieve the income and cashflows to sustain it financially over the long term without grant assistance.'' This was added because the large upfront investment often prevents projects from producing sufficient cash flow at current energy prices without outside support. In addition, the scale of many small projects creates diseconomies of scale that further exacerbate this condition.

Demonstration of Financial Need

Comment: One commenter stated that the subsection 9006(b) of the statute states that a farmer, rancher, or small business shall demonstrate financial need as determined by the Secretary. This provision was included to ensure that assistance is directed to the country's smaller producers and rural small businesses that typically lack the financial resources necessary to purchase renewable energy systems or make energy efficiency improvements.

Section 4280.103 of the proposed rule defines ''demonstrated financial need'' as ''(t)he demonstration by an applicant that the applicant is unable to finance the project from its own resources or other funding sources without grant assistance.'' This definition is vague. Nowhere does the proposed rule describe how the Secretary assesses the applicant's ability or inability to finance the project without grant assistance.

An applicant is required to submit a tremendous amount of financial documentation and, under proposed § 4280.111(a)(3), to describe how it meets the requirement of demonstrated financial need but is given no indication of how need is determined.

The proposed rule must be amended to specify precisely how financial need—and thus eligibility under proposed § 4280.107(f)—shall be demonstrated.

In the absence of a clearly defined system for assessing financial need, USDA should consider establishing an income or revenue limit for grant eligibility. Only those applicants below a certain income or revenue threshold would be eligible to participate in the grant program. A revenue limit for financial need eligibility has the benefit of clarity and would reduce the burdensome volume of financial documentation required of grant applicants, thereby streamlining the application process. Consistent with the statute, all applicants must remain eligible for loans and loan guarantees.

Response: The definition of ''demonstrated financial need'' has been revised to include two tests under which all applicants will be evaluated as to a demonstration of financial need. The first test is a ''creditworthiness'' test—the applicant is unable to finance the project from its own and commercially available resources. The second test is the ''cashflow'' test—the project proposed by the applicant cannot achieve the income and cashflows to sustain it financially over the long term without grant assistance.

Under the creditworthiness test, the applicant must certify that they cannot obtain credit elsewhere and provide sufficient information or documentation to permit the Agency to make an independent determination. The Agency has not limited the information or documentation that can be provided to support the applicant's need in order to give the applicant the greatest degree of flexibility in demonstrating this requirement. If the applicant fails to provide sufficient information to meet this requirement, the Agency will contact them for additional information until it can make its own independent determination. In order to provide uniform Agency determinations, the Agency expects to issue additional guidance to its field offices on what has been approved as acceptable evidence of financial need, which will also be made available to the public.

Financial Need Criterion

Comment: One commenter recommended that applicants for grants not have to demonstrate financial need. According to the commenter, approving and funding a grant application should rest on the quality of the proposal and the scoring criteria and not necessarily on the financial need of the applicant. According to the commenter, it is difficult for applicants to prove that they have enough finances to match 75 percent of the project, but that they financially need the last 25 percent from USDA to get the project off the ground.

Response: The 2002 Farm Bill, Section 9006(b), requires a farmer, rancher, or rural small business to demonstrate financial need in order to be eligible for a grant under this program. Thus, USDA does not have the discretion to eliminate this requirement and has not done so in the final rule.

Comment: Two commenters stated that the authorizing language for Section 9006 makes clear that financial need is a primary condition for any applicant to receive funding under the program. According to the commenters' interpretation of the law, financial need is the only eligibility requirement, and all other conditions in the program are secondary to it. The commenters believe that the proposed rule does not reflect the primacy of financial need as required by statute.

These commenters also expressed the concern that the proposal does not clearly define the extent of the required explanation or its relevance to the application process. The commenters recommended that USDA make it explicit in the rule that demonstrated financial need is an eligibility requirement of the program and create a system by which all applications will be reviewed to confirm that they meet the financial need condition in the statute. The commenters offered examples of possible requirements, including: Requiring all applicants to

demonstrate that they otherwise would not be able to pay for or finance the proposed project; an automatic presumption that there is no demonstrable financial need in projects with a payback of 2 years or less by virtue of the sheer profitability of such a project, or in projects which are requesting funding for less than 10 percent of the project cost; or a presumption of demonstrated financial need when the applicant is a small agricultural producer.

Response: The commenters made three specific recommendations. The first recommendation was to require all applicants to demonstrate financial need. As provided in the statute, financial need is required only of grant applicants. This eligibility criterion was stated in proposed § 4280.107(f). USDA believes this is explicit. USDA does not believe that this grant eligibility requirement needs to be or should be part of the loan program.

The second recommendation was to implement an automatic presumption of no demonstrable financial need for projects with a payback of 2 years or less, or for projects requesting funding of less than 10 percent. As noted in a previous response, USDA does not consider payback to be an adequate measure of financial need. Financial need speaks to having the resources available to put a project in place, not to its projected revenue stream. Therefore, USDA does not consider it appropriate to implement a presumption of financial need on the basis of payback. USDA also does not believe that the amount of a funding request (10 percent or other) is also an adequate measure on which to base a presumption of financial need. Therefore, USDA rejected this suggestion as well.

The third suggestion was to base a presumption of financial need when the applicant is a small agricultural producer. Again, USDA does not believe that this is an appropriate measure.

C. Applicant Eligibility

Comment: One commenter recommended that public-private partnerships be allowed to apply for funds under the 9006 program.

Response: The target of this program is private entities (i.e., farmers, ranchers, and small businesses), as stated in the statute authorizing the 9006 program. USDA cannot expand the statutory scope of applicants to include public entities, including those in public-private partnerships. Therefore, USDA has not revised this criterion of applicant eligibility.

Comment: One commenter stated that the eligibility of some nonprofits for this program is still not clear. The commenter stated that they have had nonprofits apply which were organized for charitable, educational, and scientific purposes. Technically, according to the proposed definition of a small business, they are eligible because they are not formed solely for charitable purposes.

Two other commenters requested that nonprofit organizations be allowed to apply for grants and loans under the 9006 program.

Response: USDA agrees that clarification is required, but disagrees that nonprofits, in general, should be allowed. We have revised the definition of small business to allow any of the entities specifically identified in the definition (*e.g.*, electric utilities) to participate in the 9006 program if they also happen to be nonprofit entities. Otherwise, nonprofit entities remain excluded.

Comment: One commenter encouraged the broadening of the scope of an eligible applicant for loans and guaranteed loans to include a business supplying a service to an agricultural enterprise, such as manure management in the form of an anaerobic digester and power generation plant. Another commenter made a similar comment, recommending that USDA expand eligibility to allow Renewable Energy/Energy Efficiency experts to aggregate projects without ownership requirements.

Response: USDA is authorized by the language in the 2002 Farm Bill to provide grants to farmers, ranchers, and rural small businesses for the purchase of renewable energy systems and energy efficiency improvements. If the new, nonagricultural enterprise as presented by the first commenter meets the definition of a small business, then it would be eligible to apply for a grant.

As to the second comment, the role of an aggregator is more equivalent to a professional service provider who brings together eligible applicants to assist in project development and implementation. The role of an aggregator is anticipated by the Agency, but the aggregator itself is not an eligible entity. The Agency sees no reason to change the ownership requirements just because an aggregator is being used.

Comment: Three commenters requested that USDA consider modifying the rule to allow small business owners who have their headquarters in larger cities to also apply for the program. According to one commenter, the policy of limiting access to renewable energy grants to existing rural companies tends to discourage small businesses that are start-ups or happen to reside outside of a rural area, from using this program to invest, promote renewable energy projects, and create jobs in rural areas. The commenter stated that it is not unreasonable for a company to want to know that it is about to receive a grant before it takes all of the necessary steps to secure its rural location. The commenter requested that, if USDA does not change the rural residency requirement for the applicant, the requirements and the consequences of not meeting it are made clearer in the Notice of Funds Availability (NOFA), which did not clearly require the business headquarters to be in a rural area at the time of application.

Response: USDA agrees with the commenter that the proposed requirement for eligible applicant businesses to be located and have their headquarters in a rural area may limit access to start-up companies that are located in a non-rural area from investing in renewable energy systems or energy efficiency improvements. In the final rule, both the rural small business and the project must be located in a rural area. The business headquarters, however, may be located in either a rural or non-rural area. Thus, we do not believe it is necessary to address the location of the rural small business' headquarters in the rule.

D. Project Eligibility

Comment: Three commenters expressed concern about large commercial wind projects. The commenters provided numerous reasons for their opposition of the use of the proposed program to support large-scale, commercial-wind projects. The comments focused on the commenter's claims of adverse social, environmental, and ecological impacts and the high costs and low economic benefits of wind energy projects.

Response: USDA is bound by the statute to include wind projects in the program and does not see the need to differentiate between wind projects based on size or commercialization.

Comment: One commenter requested that fuel cells that utilize non-renewable fuels be eligible for funds under the proposed program for the short-term. The commenter believes that labeling fuel cells as renewable energy sources will help speed commercialization and will hasten the process by which the industry can achieve further cost reductions in manufacturing. Like many emerging technologies, cost constraints stand in the way of implementing fuel cell technologies. If USDA allows fuel

cell adopters to tap readily existing fuels, farmers will have the ability to demonstrate this technology at a more affordable price, while realizing the tremendous advantages this technology offers.

Response: The statute requires eligible projects to utilize renewable energy. USDA cannot expand this requirement to fuel cells that utilize only nonrenewable fuels. As noted in a previous response, USDA is amendable to considering projects that use nonrenewable fuel to some extent.

Comment: One commenter suggested that hydropower be added to the list of approved technologies associated with this rule. The commenter requested the addition of small hydroelectric power generating facilities (*i.e.* less than 5,000 kW) to the program, perhaps in a manner similar to that included in the proposed HR 6 Energy Policy Act.

Response: The statute authorizing the 9006 program does not include hydropower in the definition of ''renewable energy,'' and, therefore, hydropower projects are not eligible for funds under this program.

Comment: One commenter noted that, as proposed, eligible projects for biomass and bioenergy specifically exclude livestock waste. The commenter points out that there are emerging technologies involving thermochemical conversion of animal waste (for example, from livestock processing facilities) to synthetic oil. The commenter believes that these projects should be eligible for funding.

Response: USDA agrees with the commenter that all animal waste projects fall into the anaerobic digester category. USDA also agrees that the emerging technology described by the commenter would be eligible for funds under the 9006 program. As these emerging technologies become more mainstream (*i.e.*, become pre-commercial or commercial), USDA intends to expand the technical guidance to address new technologies. The final rule incorporates provisions to allow new technologies to apply for funding even if the technology is not addressed in either appendix to the regulation.

Comment: One commenter suggested that the projects for solar water pumping and use of solar for hydrogen fuels for farm-based engine generator sets, and photovoltaics to drive farm and food processing compressors, refrigeration, and motors should be allowed as eligible projects.

Response: Each of the specific applications identified by the commenter is an eligible project under the 9006 program.

Comment: One commenter suggested that for both large and small solar projects, the rule includes as eligible projects those that provide solar air heating and water heating with no active storage. The commenter provided suggested language.

Response: USDA agrees with the commenter that projects that provide solar air heating and water heating with no active storage are eligible under the 9006 program. We have revised the definitions of solar projects such that such technologies are implicitly eligible by not addressing the type of heat transfer mechanism.

Comment: One commenter believes that the proposed program only gives token support for alternative energy developments and that by restricting most grant and loan support for existing commercial alternative energy systems, no real competition with the petroleum industry is offered. The commenter then goes on to claim that the most promising alternative energy programs are not supported or they are sabotaged as in the case of hydrogen fuels development under the proposed program. While there are many cost-effective sources of hydrogen, Federal programs are requiring the use of petroleum for hydrogen fuels.

Response: USDA appreciates the need for alternative energy developments. However, the responsibility for developing and funding such alternative energy systems, including the development of hydrogen-based technologies, does not reside in USDA. The Department of Energy is responsible for bringing research and development opportunities to fruition; that is, to the pre-commercial and commercial stages. Once such technologies reach these phases, there is a high probability of their successful implementation. USDA will use the 9006 programs to fund only those projects for which there is the high probability of success. We believe that this is an appropriate and responsible approach for the distribution of grants and loans under this program.

Wind Projects

Comment: One commenter found the requirements in the small wind section to be overly burdensome for the applicant, as specifically discussed below:

The rules for wind turbines under 100 kW capacity are not clear in regards to the need for use of professional engineers—the proposed rule explicitly states that only projects over $100,000 will require that the services of a professional engineer to be used, yet the description for design and engineering in the proposed rule states:

''Small wind systems must be engineered by either the wind turbine manufacture or other qualified party. Systems must be offered as a complete, integrated system with matched components. The engineering must be comprehensive including turbine design and selection, tower design and selection, specification of guy wire anchors and tower foundation, inverter/controller design and selection, energy storage requirements as applicable, and selection of cabling, disconnects and interconnection equipment as well as the engineering data needed to match the wind system output to the application load if applicable.''

The commenter expressed concern that this language can easily be interpreted to mean that unless a complete component package including the components required by utility rules for interconnection is purchased from a turbine manufacturer, or the applicant or the system dealer must hire their own professional engineer to certify the system, in fact these rules may require hiring two engineers as there are electrical components, as well as civil or mechanical engineering components. Many components, such as the batteries, inverters, and cabling for small projects can be purchased off-the-shelf from a variety of vendors. Individuals with the necessary technical skills and experience (as documented in the project team section) can safely select these standard components. Signoff by utility staff as to the adequacy of interconnection equipment should also be sufficient for approving those components. The commenter is also concerned that the rule language as written will be interpreted to mean that each project requires a professional engineer to sign off on the entire project. Such requirements could certainly add undo costs to projects.

The commenter recommended the following:

''Small wind systems must be designed and engineered to assure safety and reliability of the project. For small wind systems, either the wind turbine manufacturer or other qualified party must design and engineer the turbine, tower and tower foundation (including guy wire anchor specification) as a complete and integrated system. As outlined in the proposed § 4280.111(d)(8)(iv), interconnection design and equipment must be approved by the local utility if the turbine is to be interconnected to the electric power distribution grid. Finally, all other components, including energy storage, must be selected and matched

by a qualified technician as part of a comprehensive system design.''

Response: We agree that for the smaller wind systems, an applicant may purchase certain components off-the-shelf from various vendors. For small wind systems with total eligible project costs equal of $200,000 or less, the rule requires the applicant, in part, to ''certify that their project will be designed and engineered so as to meet the intended purpose'' and to provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose. We believe this addresses the commenter's concern.

For small wind systems with total eligible project costs greater than $200,000, however, we have retained the same language as in the proposed rule. These larger small wind projects are more likely to require complete packages, and applicants are less likely to ''piece together'' such a system.

Finally, under the final rule, for renewable energy projects with total eligible project costs greater than $400,000, the services of a professional engineer are required. We believe this requirement is more in line with the level of complexity associated with the larger renewable energy projects and appropriate for small wind projects that should exceed this level of cost.

Comment: One commenter suggested that, for wind projects, the applicant should also describe whether or not sources of income will include—in addition to annual revenue from electricity sales—the value of Federal or State incentives, such as production tax credits. For methane digesters on dairy farms, the applicant should also state whether or not sources of income will include—in addition to income from sale of electricity—noncash savings from bedding costs, excess bedding sales, carbon and tax credits, heating energy savings (e.g. water), or any other farming efficiencies.

Response: For large wind projects, the proposed rule required a description of ''annual project revenues including, but not limited to, electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project.'' For small wind projects, the proposed rule required a description of ''applicable investment incentives, productivity incentives, loans, and grants.'' For anaerobic digesters, the proposed rule required a description of ''annual project revenues and expenses'' and of ''applicable investment incentives, productivity incentives, loan, and grants.''

The Agency believes that this language adequately addresses the question of tax credits and production incentive credits. While we have not specifically identified noncash savings from bedding costs, excess bedding sales, heating energy savings, or other farming efficiencies in the final rule, USDA agrees that they can be legitimate ''other sources of revenues'' provided they are directly related to the project and their value is sufficiently documented.

Comment: One commenter referred to the recent General Accounting Office (GAO) report on wind energy (GAO 04–756, Renewable Energy—Wind Power's Contribution to Electric Power Generation and Impact on Farms and Rural Communities, September, 2004), which, according to the commenter, showed that wind energy was not benefiting either the rural economy or farmers in general.

The GAO report described the problems that currently exist but did not define a mechanism to deal with the problems other than to call for an implementation of the authorized Section 9006 program and to establish better coordination between government agencies.

The commenter provided information related to several issues related to wind energy and also provided the following specific recommendations to address the known issues:

- An alternative to large, utility-scale systems that could provide a better strategy would be the use of smaller turbines in ''windsheds'' that could be structured around cooperative ownership. Smaller turbines require less capital per unit and allow greater distribution and more access points on the transmission grid because of lower output. In partnership with or as a subset of traditional rural electric cooperatives and the private utilities serving rural areas, farmers could own and manage the system, offset individual electrical use, and provide power to the grid.
- This approach creates two separate opportunities for diffuse rural networks where the turbine is sized to complement existing grid infrastructure.

(a) Farm-scale horizontal axis turbines mounted on tall, self-erecting towers that do not require special roads or large cranes. Here, smaller swept areas can be more effective because blade forces are reduced, particularly in severe events, making for lower costs and simplifying installation/service.

(b) Farm-scale vertical axis turbines designed to work efficiently at the lower wind speed and more turbulent flow seen at lower altitudes.

- Technical and financial support for these farm-scale systems should be a high priority for a variety of reasons:

(a) Diffuse systems are robust, and definitely not susceptible to terrorist attack.

(b) Boost farm income and utilize a renewable resource.

(c) Enable rural economic development.

(d) Opportunity to symbiotically combine wind energy production with other forms of alternative energy production such as methane production.

- Create an independent third-party evaluation program via a dedicated grant to evaluate wind turbines that are suitable for on-farm use and capable of producing significant electricity for the grid. No single organization has the resources needed for this organization. This program should be independent of existing government evaluation programs focusing on certification and/or technical development. Existing government programs (such as National Renewable Energy Laboratory (NREL) and Sandia) have inherent conflicts-of-interest when it comes to making specific product evaluations and recommendations. This program should utilize existing government expertise and resources whenever reasonable. The primary award should be made to a proactive nonprofit organization with no technology conflicts. Sub-awards for the comprehensive evaluation of specific components should be made to organizations with existing resources and expertise. This program will also conduct one or more random inspections of the production factory(ies) to evaluate production quality control practices. Evaluations will go beyond minimum specifications and safety issues to include projected operating and maintenance costs, ease of installation, installation costs, quality, etc. As part of the demonstration program, this group should coordinate with the Environmental Protection Agency's Office of Air and Radiation (OAR) to link utilities interested in purchasing power from renewable sources with farm-scale, farmshed cooperatives.
- Fund a demonstration project via a dedicated grant which documents the issues and feasibilities associated with actually creating a diffuse, large-scale, regional, on-farm, integrated wind-farm; and which integrates wind energy electricity production with the production of electricity from another form of renewable energy which can be used to offset the inherent variability of wind energy production.

Response: USDA appreciates the findings of the GAO report. This

regulation considered those findings when promulgating this regulation. The commenter then goes on to identify five specific recommendations, which the Agency addresses below.

First, the Agency agrees that use of smaller turbines, rather than large, utility-scale systems, is desirable and encourages applicants to partner with others. Nothing in the proposed rule or in the final rule prohibits the adoption of this type of system or partnership.

Second, the commenter identifies two types of turbines that could be used to implement the smaller turbine approach in the first recommendation. To the extent that such turbines have technical merit, this would be determined during the evaluation of the application. Otherwise, there is nothing that needs to be addressed in the final rule with regard to this second recommendation.

Third, the commenter recommended that the rule give high priority to these farm-scale systems. In the final rule, there are two mechanisms that are likely to give preference to farm-scale systems because such systems are likely to be lower-cost systems (i.e., total eligible project costs of $200,000 or less). First, the effort required to prepare a grant application for such systems has been reduced. Second, more points are now awarded to the smallest agricultural producers and to very small businesses. To the extent that such farm-scale systems are proposed by these applicants, they would be awarded more points than larger-scale systems.

Fourth, the commenter recommended creating an independent third-party evaluation program via a dedicated grant to evaluate wind turbines. The purpose of the 9006 program is to provide funds for the purchase of renewable energy systems and energy efficiency improvement projects. The funding of an independent evaluation program is not part of the scope of the authorizing statute. USDA notes that we are currently working with EPA's OAR to develop assistance in working with utilities on interconnection and power agreements.

Fifth and last, the commenter recommended funding a demonstration project via a dedicated grant. As noted in the previous paragraph, the purpose of the 9006 program is to provide funds for the purchase of renewable energy systems and energy efficiency improvement projects. The funding of demonstration projects for any renewable energy system is not part of the scope of the authorizing statute.

Miscellaneous

Comment: One commenter recommended that specific grants be established to permit the applicant to evaluate local, State, and national regulations and permits and licenses pertaining to the location and construction of facilities producing biofuels, biopower, and biobased products.

Response: As stated in the authorizing statute, the 9006 program is for the purchase of renewable energy systems and energy efficiency improvements. The program was not designed to provide funds to stand-alone studies of requisite permits and licenses or evaluations of applicable regulations. However, USDA recognizes that obtaining such permits and licenses are inherent costs to implementing a renewable energy system or an energy efficiency improvement project. Therefore, USDA included such costs as part of the eligible project costs for which funds can be obtained.

Comment: One commenter noted an apparent contradiction between eligible project costs in proposed § 4280.109(a)(1)(ii) and (ix) and stated that banks would not finance the item specified in proposed § 4280.109(a)(1)(iii) and (vii).

Response: With regard to items specified in proposed § 4280.109(a)(1)(ii) and (ix), the first item refers to construction and project improvement costs that occur after the application has been received by the Agency. The second item refers to costs associated with the construction of a new facility. Projects will incur one or the other of these two costs, not both. This section does not imply that a project would be expected to incur both of the costs or that a project would be expected to incur all of the listed eligible project costs. For example, renewable energy projects would not be expected to incur energy audit or assessment costs. Therefore, we disagree that there is a contradiction.

With regard to the items specified in proposed § 4280.109(a)(1)(iii) and (vii), all of these items can be capitalized and are financeable as part of the project. These items are not ''stand-alone'' items to be individually or collectively financed apart from the project. A lack of interest, on the part of some potential lenders, in financing these costs does not persuade USDA to remove them for the lenders that may be interested.

Comment: One commenter recommended that the rule be clarified that ''remanufactured'' equipment can only qualify where a demonstrated and consistent remanufacturing process is performed on the equipment. The commenter was concerned that USDA not award funding to ''refurbished'' generators that are likely to fail in several years and cease to operate due to lack of parts and expertise. According to the commenter, this is a small but real problem in the used wind turbine market that USDA should be mindful of in determining which projects are eligible for funding.

Response: Under the 9006 program, an applicant may propose to use new, remanufactured, or refurbished parts in their project. Where remanufactured or refurbished parts are proposed to be used, they must be reliable and meet the requirements of their intended application for the project's design life or as would a new piece of equipment. It is USDA's intent that sufficient information is submitted with the Technical Report to allow a thorough evaluation of the project to occur during the technical review to allow the reviewers to assess the likelihood of success for all projects, including those proposing to use refurbished or remanufactured parts. Applicants proposing to use such parts are advised that they may need to provide more information in their Technical Report to justify and support the use of such refurbished or remanufactured parts.

Comment: Several commenters inquired as to whether equipment used for wind projects should be restricted to new and unused equipment only, or whether remanufactured or refurbished equipment could also be used. One commenter specifically noted that used equipment not be allowed.

Response: As noted in the previous response, remanufactured or refurbished equipment is allowed under the 9006 program. However, USDA does not believe that used equipment should be allowed because the quality of used equipment cannot be determined. Therefore, we have added a definition of ''used equipment'' to the rule to distinguish ''used equipment'' from refurbished or remanufactured equipment, which is allowed if such equipment is essentially equivalent to new and unused equipment.

Comment: One commenter requested clarification on the role of third-party operators. The commenter notes that the proposed rule specifies that the applicant must be the owner of the project and control the operation and maintenance of the proposed project, and that a qualified third-party operator may be used to manage the operation and/or maintenance of the project. The commenter stated that, as they understood the section, large wind projects using business models that utilize equity investors to take advantage of the Federal production tax credit are eligible. In this case, the applicant remains the ''general partner''

in the limited liability corporation, while the equity partner is a ''limited partner.'' Some form of this business model is used by most successful farmer-owner large turbine wind projects. As such, the commenter recommends that USDA not limit an applicant's ability to bring in equity partners to take advantage of tax credits. It appears that the current language is sufficient for this purpose, but the commenter believes it is an issue that merits some scrutiny.

Second, some definition or clarification of what constitutes a qualified third-party operator is needed. Clarification of this definition is important because State USDA officials have made different interpretations on what a ''qualified third-party operator'' is.

Response: USDA agrees that the rule should not limit an applicant's ability to bring in equity partners as described by the commenter and has revised the final rule to allow ''passive investors'' to participate in the 9006 program.

The commenter also requested some definition or clarification as to what constitutes a qualified third-party operator, because of the potential for many different interpretations being made by Agency employees. The Agency has included a definition of ''qualified party,'' which provides general guidance.

While this definition has been added, it is USDA's intent that the determination of who actually qualifies as a ''qualified party'' will be made by the technical reviewers and not by State USDA staff. As the pool of technical reviewers will be small (perhaps two or three per technology), USDA anticipates that different interpretations will not be an issue. In addition, what constitutes a qualified party will vary depending on the specific technology being proposed. USDA believes the best place to deal with this determination is at the technical review stage and not in the regulations implementing the 9006 program.

Comment: One commenter suggested that USDA limit loan guarantees (and direct loans, if made available) to farm-scale systems. The commenter referred specifically to wind turbines, where scale should be defined by the ability to provide significant electricity to the grid to meet national needs. The commenter recommended that individual wind turbines should be greater than 50 kW and less than 999kW, but that tower heights should not be limited. According to the commenter, the development of self-erecting towers, which do not require the use of large cranes for installation and maintenance with their specialized infrastructure, make it feasible for farm scale turbines to be deployed on tall towers to efficiently capture the higher speed and less turbulent winds at higher altitudes.

Response: USDA disagrees with the commenter. USDA believes that the loan guarantee program should be available to all renewable energy projects regardless of size if the project and the applicant meet the eligibility criteria. Therefore, USDA has not revised the rule as suggested by the commenter.

Comment: One commenter stated that by restricting grants and loans to existing commercial energy systems, the proposal acts to impede real progress in renewable energy. The commenter recommended that USDA fund innovative/new types of renewable energy projects at the 75 percent level. Referring to U.S. Code Title 18, Part I, Chapter 105, Sections 2151 and 2156, the commenter stated that it is illegal to interfere with national defense preparations, and claimed that the proposed rule acts to prevent the development of innovative renewable energy technologies, helps to sustain the demand for U.S. petroleum imports from the volatile Middle East, and sabotages efforts to reduce dependence on petroleum imports, as well as homeland security efforts.

Response: By statute, USDA is limited to funding projects at the 25 percent level for grants and at the 50 percent level for loans. We cannot increase this to 75 percent as requested. To the extent that the commenter is suggesting that this program be used to fund renewable energy technologies still in the research and development (R&D) stage, as noted in a previous response to this commenter, it is DOE's responsibility, not USDA's, for assisting in the development of innovative and new types of renewable energy projects.

Comment: One commenter objected to provisions requiring the applicant or borrower to be the owner of the system and also to control the operation and maintenance of the project. The commenter felt that this would exclude many energy installers and energy service providers. The commenter recommends that USDA should ''adjust eligibility criteria or modify the program to allow for rural small business with expertise in renewable energy and energy efficiency installation to aggregate projects and submit applications without ownership requirements.'' A second commenter also recommended that rural small businesses with expertise in renewable energy and energy efficiency installation be allowed to aggregate projects and submit applications without being required to retain ownership and control of all systems.

Response: USDA disagrees with the commenters. As noted in a previous response, the 9006 program is for the purchase of renewable energy systems and energy efficiency improvements. By purchasing either, one becomes the owner. USDA, therefore, believes ownership requirement is an inherent part of this program and has not revised the rule as requested.

E. Application and Documentation

General

Comment: One commenter recommended that applicants be encouraged to partner with intermediaries that provide ''full service'' energy assistance, which would include (1) help in applying for Section 9006 awards; (2) conducting energy audits; and (3) project management.

Response: USDA concurs that it would be useful to applicants and USDA if applicants partner with ''intermediaries'' to provide full service energy assistance. However, the approach used by the applicant in developing their application and obtaining other services is a business decision and beyond the scope of the regulation. Therefore, this comment has not been adopted.

Comment: Several commenters suggested that USDA allow applications on-line or on a CD–ROM.

Two commenters recommended that USDA allow applicants to submit proposals electronically, either on-line or on a CD–ROM. This will enable complete technical review and scoring based on full applications.

Three commenters suggested that an on-line application process would reduce redundant and duplicative entries by allowing common information to be populated on required forms. It also would guide applicants through the process and thereby reduce the number of incomplete applications, and it would standardize the final application documents, thereby facilitating application review by Rural Development and NREL staff(s). Rural Development has experience in developing such an online application system for lenders in its B&I Loan Guarantee program.

Another commenter discussed a possible online application process, stating that while this is a great option to have, it should not be the only means by which an applicant can apply for the program. High-speed Internet access is not widely available in rural America and dial-up access can make an on-line application process slow and

tumultuous. Rural America is in the process of transitioning to computer-based records and applications. If USDA made applying for the program an on-line only process, there is a serious risk that many potential applicants would be inappropriately excluded from the program. We would also suggest that USDA develop application forms and templates that can be downloaded and completed off-line. The forms should be available in formats that are accessible for a variety of operating systems (*i.e.*, Mac and Windows) and word processing software (*i.e.*, MS Word™ and WordPerfect™).

Response: USDA policy is to provide electronic application capabilities. This capability will be developed for this program after promulgation of the final regulation. The standard government forms are already available electronically. CD ROMS and faxed information is acceptable at this time. Along with evaluating the possibility of on-line applications, USDA will consider the security of such submittals.

Streamline and Simplify Application Process

Comment: Many commenters recommended that USDA adopt a less burdensome application process for smaller projects. Some of these commenters suggested the development of a short-form. Commenters felt, for example, that the application process was too complex for energy efficiency improvements, the effort to apply too extensive relative to the benefit obtained, the burden was unreasonable for small producers, and the entire application process was discouraging to potential applicants.

Response: USDA agrees with the commenters that a more streamlined approach is needed for smaller projects that will reduce the burden to the applicant, but at the same time provide the Agency with sufficient information to evaluate the merits of the proposed project. To this end, USDA has implemented a simplified application procedure for grant projects with total eligible project costs of $200,000 or less. The simplified application procedure requires significantly less effort on the part of the applicant by requiring less detailed Technical Reports. In addition, the less detailed Technical Reports may also be submitted for guaranteed loans for projects with total eligible project costs of $200,000 or less.

Comment: One commenter recommended that USDA simplify the application process for projects less than 200 kW.

Response: As noted previously, USDA has implemented a simplified application process for grant projects with total eligible project costs of $200,000 or less and for both grants and guaranteed loan applications, a less detailed Technical Report for projects with total eligible project costs of $200,000 or less. USDA elected to do this based on cost rather than capacity because cost cuts across all technologies (not all projects could be described in terms of kilowatts).

Comment: One commenter stated that the burden analysis estimates the annual cost over a 3-year period has been $1.9 million for an estimated 388 applicants. This means an average of about $5,600 per applicant is needed to participate in this program. If a farmer or rancher is netting $25,000 per year, which is generous in many cases, the program is demanding an outlay of 22 percent of annual profits to participate. Also, if the grant received is fairly large, say $25,000 on a $100,000 project, the ''burden amount'' is still 22 percent of the grant received since application costs are not allowable project amounts. This defacto increases the participants match amount to $80,600 or a 76 percent match ($80,600/$105,600 = 0.763). For medium to smaller sized operations, the estimated burden costs are significant.

Response: As noted in an earlier response, USDA is implementing a streamlined application process for projects with total eligible project costs of $200,000 or less. This streamlined application process will result in less burden to those who use it, including the smaller sized operations. Also, USDA cannot accommodate the commenter's request because the statute limits the matching funds for grants to 25 percent and USDA does not have the authority to raise this limit.

Direct Rebate Program

Comment: Many commenters recommended adding a rebate program to the 9006 program to reduce the burden for commercially viable, proven, and environmentally beneficial technologies to help streamline the application process and reduce the administrative burden to USDA. One commenter suggested that a rebate program be a fixed grant amount for specific off-the-shelf technologies installed.

Response: USDA is not authorized to use rebates in implementing this program. In lieu of such a program, USDA is implementing a simplified application process for grants where funds are disbursed at project completion. We believe the simplified application process achieves many of the burden reductions that could be achieved under a direct rebate program.

The simplified application process is only available to projects with total eligible project costs of $200,000 or less. In selecting the $200,000 value, USDA first considered the exposure the Agency would incur if a project was approved, but never built—the higher the total eligible costs, the greater the exposure. For example, if USDA selected a value of $1 million to be funded at the maximum level of 25 percent, the Agency could lose $250,000 if the project was never completed, which USDA considers too high of an exposure. USDA then reviewed the type of projects that were funded under the 2003 and 2004 NOFAs. USDA assessed that projects with total eligible project costs of $200,000 or less tended to be smaller projects with a smaller likelihood of not being completed, thereby lowering the Agency's exposure. A $200,000 total eligible cost project at 25 percent would result in a $50,000 exposure by the Agency. While not an insignificant sum, the types of projects that would be built and the desire to open the project to more applicants led the Agency to select this value for the design build program with reimbursement at completion.

Pre-Applications

Comment: Four commenters suggested that USDA add an optional pre-proposal review step to the application process. They stated that some official department prior review of a one- to three-page Proposal Summary would give applicants an understanding of their eligibility and better guidance, before all of the expenses for a feasibility study are incurred. Pre-proposals are being used in some competitions to minimize the burden on proposal preparer and increase the overall quality of the submitted proposals that the reviewers must process. Pre-proposals are intended to provide intermediate feedback as to whether the applicant is on track in gathering and articulating some of the key information required for a successful project and whether that project would be appropriate for funding.

One commenter suggested that the pre-proposal be structured to minimize inputs by the applicant, while providing evaluators and reviewers key information in determining the approval of the application. The pre-proposal could be structured in such a way to give evaluators enough insight on the project design so that more specific direction on the needs of a full proposal could be given to the applicant. The

commenter provided specific guidelines on how the pre-proposal process could be implemented.

Response: USDA has decided not to formalize a pre-application process within the 9006 program because the Agency does not believe it is the best way to achieve the goals sought by the commenters. Applicants can obtain the same guidance that a pre-application process would provide by contacting their State Offices. USDA advises applicants to work with their State Offices as early in the application process as possible to help assess whether they and their projects are eligible prior to conducting other, more expensive application procedures. USDA will provide implementation and training materials to further help both the State Offices and prospective applicants. By providing this information outside the rulemaking process, USDA maintains greater flexibility in providing assistance to prospective applicants.

Technical Review

Comment: One commenter suggested modifying and/or minimizing the technical reviews by NREL. If an engineer or engineering firm approves technical feasibility of the proposed project for the applicant, accept the information from the engineer. If NREL must perform a technical concurrence or refutation of the project, a system should be established that allows feedback to the applicants. If there is a bias against a particular technology or approach to renewable energy, communicate that with the States so they can perform better outreach.

Response: USDA will review the technical feasibility of any project seeking funds under the 9006 program, regardless of the qualifications of the engineer or engineering firm hired by the applicant. Further, USDA or its designated contractor(s) will conduct the technical reviews in a manner that we deem fit and appropriate to the evaluation of the technical merits of each project. This review will be conducted without any bias on the type of project being proposed. If an applicant believes that his or her project has been unfairly denied, the applicant has the right to appeal that decision to USDA.

Application

Comment: One commenter stated that in the past, technical reviews had been compromised due to missing portions of the application. The commenter recommended that applicants submit two copies, one to the National Office and one to the appropriate USDA State Office, thereby ensuring that both offices have the complete data required to evaluate the application.

Response: USDA agrees with the commenter that two applications should be submitted, and the final rule has been revised to reflect that. However, in the final rule, the two copies will be submitted to the Rural Development State Office, which is the responsible office for implementing the 9006 program, including the scoring of the applications. The State Office will then forward a copy of the application and its score to the National Office, whose role is to establish the procedures for the 9006 program and to rank the applications from all 50 States.

Application Content

Comment: One commenter stated that there is no mention of submitting organizational documents. The proposal only asks for a description of the business, farm, or ranch operation and ownership. The commenter stated that they had encountered applications stating they had a partnership, but when the reviewer asked for a copy of the partnership agreement—the applicants said it was a verbal agreement. Is that acceptable? What assurance is there that the applicants are a legally formed entity? Also, only by examining the Articles of Incorporation can you determine whether nonprofits were organized solely for charitable purposes.

Response: USDA agrees with the comment and the final rule requires applicants, except for sole proprietors, to submit a copy of their legal organizational documents.

Comment: One commenter, commenting on proposed § 4280.111(a)(4)(iii)(A), stated that, because the demonstration of a financial need is not an appropriate threshold factor, the explanation of such a need should not be required in the application.

Response: Section 9006(b) requires a farmer, rancher, or rural small business to demonstrate financial need in order to be eligible for a grant under this program. Therefore, USDA must include this requirement. In the final rule, all grant applicants must submit a statement certifying that they have financial need. Those grant applicants not using the simplified application process must also submit sufficient information to allow the Agency to make its own determination of the applicant's financial need. For those grant applicants using the simplified application process, the Agency may request the applicant to provide supplemental information that will allow the Agency to make its own determination of the applicant's financial need.

Comment: One commenter requested clarification on how USDA intends to use the information provided in the application by agricultural producers on the gross market value of their agricultural products for the calendar year preceding the year in which they submit their application. The commenter stated that if this information is to be used to document a producer as a true agricultural producer for program eligibility, this is fine. However, if a single year's crop gross market value is used by USDA to determine financial need, the commenter stated that this is inappropriate, noting that crop year 2004 is a rare year in which farmers in many States are realizing record yields in concert with steady crop prices. The commenter believes that this rare year of plenty should not be used to restrict eligibility for grants under the 9006 program.

Response: USDA will use this information to determine whether an applicant qualifies as a ''small agricultural producer'' when it scores applications. While it will not be used to determine if an applicant is an agricultural producer, it will be supporting evidence that the applicant is an agricultural producer. Finally, it will not be used to determine an applicant's financial need. USDA does not believe the final rule needs any modification or clarification.

Comment: One commenter asked whether applicants will be required to have a Federal tax ID number at the time of application, along with the DUNS number.

Response: Yes, both are required.

Comment: One commenter made the following points:

- The Table of Contents is superfluous and has not been helpful when it has been included.
- Pro forma balance sheet—only the cashflow statement has provided useful information when the application was for a grant only.
- Business market information is not really needed for renewable energy systems if the applicant has a power purchase agreement or letter of intent to do so.

Response: In the final rule, the Agency has elected to keep the Table of Contents. It assists the applicant in organizing its application materials to its best advantage. It itemizes requested data to ensure complete information at the outset. It acts as an organizer of information for more efficient and timely review.

With regard to the pro forma balance sheet, we have elected not to require it for projects with total eligible project costs equal of $200,000 or less. For very small businesses, pro formas are not always as accurate or helpful as they are for larger projects. Therefore, we have eliminated the requirement for pro forma balance sheets for smaller projects. However, we have retained it for larger projects (*i.e.*, those projects with total eligible project costs greater than $200,000) due to the nature, scope and complexity, and financial risk.

Finally, the specific requirement for business market information from the general application section has been removed, but is still required in the Technical Reports for certain projects where such information is important to the feasibility of the project. In addition, such information would be provided in the business-level feasibility study, if one is required.

Comment: One commenter referred to the credit reports required for those owning more than 20 percent and suggested an exception for nonlocal financial owners making use of Federal tax credits.

Response: USDA has revised the rule to make it easier for passive investors, which would include nonlocal financial owners making use of Federal tax credits, to participate in renewable energy projects. To this end, we have revised the credit report requirement such that credit reports are not required for passive investors (and for those corporations listed on a major stock exchange).

Power Purchase Agreement (PPA) and Interconnection Agreements

Comment: Five commenters recommended that USDA exempt 100 kW or less renewable energy projects from the requirement of having a PPA or interconnection agreement. According to the commenters, renewable generators up to 100 kW are guaranteed the right to interconnect under Section 210 of Public Utilities Regulatory Policies Act (PURPA), 1978. In most States the interconnection rules, including net metering availability, are spelled out. No PPA or, according to one commenter, a project-specific interconnection agreement, is required. One of the commenters stated further that, in most States, the interconnection rules, including net metering availability, are spelled out and that no PPA or project-specific interconnect agreement, which can take considerable time and expense to obtain, is required.

Response: USDA disagrees that projects funded under the 9006 program should not be required to obtain a PPA or an interconnection agreement when the applicant intends to sell power generated by the proposed project. For many of these projects, the ability to sell power makes them financially feasible. If the project is interconnected with an electric power system, it is inherent that an interconnection agreement and a PPA must be made. These agreements and arrangements are covered by different regulations and policies (State, Federal, public utility) that are beyond the scope of the regulation. Agreements with the utility buying the power will help ensure USDA that it is funding projects that will come to fruition.

Comment: One commenter stated that requiring the applicant to provide an interconnection agreement or a letter of intent for an interconnection agreement should not be an application requirement for any project pursuant to this program. The commenter stated that this provision forces the applicant to rely upon the third-party utility to provide assistance or information that may not be required of that utility by law. While all utilities must interconnect in Iowa, the law does not currently provide a time in which the utility must interconnect, and the applicant may not be able to obtain such a letter from the utility in order to meet the requirements of the application process. Second, utilities do not often enter into interconnection agreements until the engineering plans are submitted, potentially amended, and approved by the utility, and the regional transmission operator if necessary; and so unless a project is ready for the installation and construction phase, it is unlikely that the applicant would be able to obtain an interconnection agreement or even a letter of intent.

Response: As noted in the previous response, USDA is still requiring applicants to obtain the necessary PPA and/or interconnection agreements prior to USDA obligating funds to a project. We concur with the commenters that an agreement or letter of intent may be beyond the applicant's ability to obtain at the time of application. Therefore, USDA has revised what is required at the time an application is submitted. Under the final rule, an applicant is required in the application to demonstrate familiarity with the regulations and utility policies. In order to do this, it is necessary that the applicant be knowledgeable of the interconnection and power purchase arrangement available to them, and that they demonstrate to USDA that they have a working knowledge of these requirements for their project. In addition, in the Technical Report, the applicant is required to describe the utility system's interconnection, requirements, power purchase agreements, or licenses where required. USDA advises applicants to provide sufficient information in this regard because the interconnection and PPA are critical elements in determining whether the project has technical merit.

Because USDA considers these agreements to be critical, the scoring of applications for those projects that are proposed for interconnection will receive the maximum available points if the necessary agreements or letters of intent to award these agreements are submitted with the applications.

Comment: One commenter stated that applicants are required to provide an economic impact analysis for their project. The commenter feels this is an additional area to streamline, improve, and simplify the application process by eliminating this requirement for agricultural producers and small businesses.

Response: An economic impact study is part of the business-level feasibility study. As noted in a later response, the business-level feasibility study is mandatory for renewable energy projects with total eligible project costs greater than $200,000 under the 9006 program. When a business-level feasibility study is required, the economic impact study is still a part of such a study.

Comment: One commenter requested that renewable energy systems that the exemption for providing a feasibility study conducted by a professional engineer (PE) be raised to more than $100,000. The commenter observed that his organization had forgone project applications because the feasibility study would have cost more than $25,000.

Response: Business-level feasibility studies prepared by an independent, qualified consultant, not necessarily a PE, will be required for renewable energy projects with total eligible project costs greater than $200,000.

Comment: Several commenters expressed concern regarding consistency with the $100,000 threshold throughout the rule and the units associated with it, as it related to the proposed feasibility studies and other requirements.

One commenter stated that the proposed rule's requirements for a feasibility study were inconsistent. In this section, a feasibility study is required for projects with a total cost above $100,000, while in the **SUPPLEMENTARY INFORMATION** section, a feasibility study is defined as being required for grant requests over $100,000. Commenter stated that these

inconsistencies would confuse the reader and recommended that the wording be changed so that a feasibility study was required when the total project cost was above $250,000.

Another commenter recommended that feasibility studies be required only for projects over 100 kW.

A third commenter stated that the threshold for requiring a feasibility study for renewable energy projects is not consistent between the preamble discussion and the proposed regulation. In the preamble, it refers to projects in excess of $100,000, and in the regulations, it refers to requests in excess of $100,000. As the request cannot exceed 50 percent of the total project, this is a significant difference. The commenter recommended the threshold be based on the size of the project and not the size of the request (this is a more consistent value to base the requirement on); however, the threshold should be increased to $500,000. The Rural Development Office should have the ability to waive this requirement if the application is for an existing business and the renewable energy system does not have a significant impact on their operation (similar to the ability to waive feasibility studies in the current B&I program).

A fourth commenter requested clarification of $100,000 threshold for additional requirements. The multiple references to the $100,000 threshold for ''feasibility study for renewable energy systems,'' ''services of professional engineer,'' and ''energy audits'' is unclear in the proposed rule and needs clarification (i.e., either total project request or total project cost). The commenter recommended a return to the language and requirements as stated in the 2004 NOFA published in the **Federal Register** (69 FR 25234–25259, May 5, 2004) for ''feasibility study for renewable energy systems.''

—Feasibility study for renewable energy systems. Each application for a renewable energy system project, except for requests of $50,000 or less, must include a project-specific feasibility study prepared by a qualified independent consultant.''

If stating thresholds in terms of total project costs, it would read:

—Each application for a renewable energy system project, except for projects costing $200,000 or less, must include a project-specific feasibility study prepared by a qualified independent consultant.''

For the use of the services of a PE, the proposed rules reads: ''Projects costing more than $100,000 require the services of a professional engineer (PE).'' This requirement would no longer fit the above statement on requirements for a feasibility study; thus, we suggest a change of threshold for the requirement of a PE.

The commenter suggested the following language:

''Project requests of more than $50,000 will be required to employ the services of a professional engineer (PE).''

If stating thresholds in terms of total project, costs, it would read:

''Project costing more than $200,000 will be required to employ the services of a professional engineer (PE)''

The energy audit requirement is a good requirement for any energy efficiency project. The commenter suggested the following language if all thresholds are stated in the amount requested:

''For energy efficiency improvement projects with a request in excess of $25,000, an energy audit is required.''

A fifth commenter stated that using the word ''request'' is unclear. A question remains as to whether feasibility studies are required for projects with a total cost of $100,000 or if they are required for those projects in which the Federal share or Federal request will be $100,000. The latter would provide for feasibility studies required for those projects that cost $400,000 or above.

Response: First, an explanation of the thresholds used by USDA is discussed in other comments in this preamble.

Second, as noted previously, the requirement for a stand-alone, business-level feasibility study will be required for renewable energy projects with total eligible project costs greater than $200,000.

Third, in the final rule, with two exceptions, all levels at which certain requirements are incurred (*e.g.*, energy audits, use of a PE) are now consistently expressed in terms of ''total eligible project costs.'' The first exception is under the loan program, where certain requirements are associated with ''loan requests.'' The second exception is under § 4280.115, where certain requirements are based on the cost of the contract.

Business-Level Feasibility Study for Renewable Energy Systems

Comment: One commenter stated that according to the proposed rule, ''because of factors of cost and complexity for renewable energy system projects of more than $100,000 a project-specific feasibility study will be required.'' It is our understanding that feasibility studies that are completed prior to the award are eligible for reimbursement under this program. If feasibility studies completed prior to the award are not eligible for reimbursement, the commenter recommended that two phases of the program be implemented. One phase for the feasibility study/business plan/planning phase and one phase for project implementation. The commenter proposed that this could be similar to the Value-Added Producer Grant program. By allowing applicants to conduct a feasibility study with program funds before implementing their project, USDA can ensure that the implemented projects are of high quality and have a high probability for success.

Response: In the proposed rule, the requirement for a project-specific feasibility study (renamed as a business-level feasibility study in the final rule to better characterize the type of study and to distinguish from the Technical Report) was mandatory for renewable energy projects of more than $100,000. In the final rule, the Agency has revised this position to reflect that a business-level feasibility study will be required for renewable energy projects with total eligible project costs greater than $200,000.

As noted in a previous response, the 9006 program is for the purchase of renewable energy systems and energy efficiency projects. The preparation of the Technical Reports are legitimate project costs and thus, are eligible costs for reimbursement provided the project is awarded a grant or loan. USDA will not pay for the costs of a study that are incurred for a project that is not successful or for ''stand alone'' studies.

Technical Reports

Comment: Two commenters recommended streamlining the application process for small projects by reducing the technical requirements or by incorporating this information into the project narrative. One of the commenters was specifically concerned about the requirements for small wind and small solar projects.

Response: As noted in previous responses, USDA has provided a simplified application process for grants for projects with total eligible project costs of $200,000 or less. The Agency believes most small solar and small wind projects will be eligible for this simplified application process. Part of the simplified application process is the development of a ''reduced'' technical report for these smaller projects. The Agency believes that the reduced technical reports will significantly streamline the application process and reduce the burden to the applicant.

Comment: One commenter recommended including the general requirements in the regulation while developing more specific requirements in a guidance document that can be updated periodically.

Response: USDA, in general, agrees with the commenter on both comments. First, the rule has been revised to include the general requirements for the Technical Report in the body of the rule, but with more specific requirements in the appendices to the regulation, not as guidance documents.

Comment: One commenter suggested that identifying the schedule of utilities and regional transmission operators, where necessary, is not always possible. According to the commenter, the requirement for applicants not interconnecting to identify the interconnection and PPAs and schedules thereof is not necessary for those applicants not interconnecting. The commenter pointed out that many utilities do not require interconnection agreements for projects installed on the customer side of the meter, but the utility may require some safety equipment assurances and so simple proof of that investigation should be appropriate.

Response: USDA agrees with the commenter that such agreements are not applicable to applicants who are not interconnecting. The revised rule language now uses these agreements as an illustration of one of the types of agreements that may be necessary.

Comment: One commenter stated that the last sentence in proposed § 4280.111(d) should be removed or explained further. The proposed rule does not clearly establish a threshold level, beyond those projects that cost more than $100,000, at which projects will require a professional engineer. The proposed rule does not establish who will decide what level of engineering is required or what kind of public safety issues will require the assistance of an engineer.

Response: The sentence the commenter is referring to says: ''Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a PE may be required for smaller projects.'' In general, the level of engineering required for smaller projects can widely vary. It is not practicable within this rulemaking to address each situation that may arise. Each project will have its own specific circumstances—the nature of the project itself, the site where the project is located, and the State and local requirements (*e.g.*, public safety issues) that apply to the project.

It is the proper role of the applicant to ensure public safety. It is the applicant's responsibility to determine what are the proper measures to be put into place. These measures may require the services of a PE. The language is included so as not to transfer the applicant's responsibility to USDA. The Agency will evaluate the technical merit of each project. Certain projects, especially those using pre-commercial technologies or those not pre-engineered, may be determined by USDA to need the services of a PE to assure technical viability.

USDA advises all applicants to work with their State Office and other knowledgeable technical entities to determine whether their project requires the use of a PE and the type of PE. For these reasons, the Agency has not changed this language (although in the final rule the level at which a PE is required has been raised to $200,000 total eligible project costs).

Comment: One commenter also referred to the last sentence in proposed § 4280.111(d). This commenter noted that there could be many engineers involved on one project that oversee many different areas of the project that could hold responsibility for the design (civil, structural, mechanical, process, and electrical).

The commenter believes that the requirement should state something along the lines of: ''Projects costing more than $100,000 will be required to employ the services of a professional engineer (PE), or a team of Professional Engineers that will ensure that all aspects of the project conform to National, State, and local codes.''

Response: USDA agrees that a team of professional engineers can be used, and has revised the wording accordingly.

With regards to referencing national, State, and local codes, compliance with these codes is addressed in the Technical Report requirement and USDA does not believe it necessary to repeat it here. We point out that, as installed, all projects have to meet all applicable national, State, and local codes. If the project is not compliant with applicable codes, it is not eligible for funds under the 9006 program.

Comment: One commenter asked about the use of foreign engineering. Questions raised by the commenter were: What if the project is designed by an engineer in Germany? Other countries do not have the same licensing requirements for engineers as the United States does, so there cannot be a ''PE'' certifying the technology. How are foreign engineers going to be able to ensure their technology meets or exceeds U.S. regulations when they are not even able to review documents without the use of an interpreter?

Response: There is nothing in the rule that prohibits an applicant from employing the services of a foreign engineer, as long as the foreign engineer is licensed in the area in which the project will be built. This is required of any engineer, American or foreign—the engineer must be licensed in the jurisdiction in which the project is located regardless of where the person resides or what country the engineer is a citizen of. USDA notes, however, that an applicant does not need a PE to certify the technology. If an applicant uses foreign engineers who are not appropriately licensed, then someone who is properly licensed will have to be employed. USDA expects that most foreign engineers that an applicant would use for renewable technologies have done business in the United States and are familiar with the necessary licensing requirements. Thus, we do not expect the use of foreign engineers on projects under this program will be a major issue.

Comment: One commenter stated that applicants not planning to sell the excess energy generated should not be required to provide data identifying existing demand, supply, and the market niche for the energy produced.

Response: USDA agrees with the commenter. Further, the Agency believes that these data are not required of any applicant, except as they would be needed when a business-level feasibility study is required. The final rule has been revised accordingly.

Comment: One commenter, commenting on proposed § 4280.111(d)(1)(i), suggested removing the first sentence completely or providing some parameters as to how USDA will qualify project teams.

Response: The sentence referred to by the commenter states ''The biomass project team will vary according to the complexity and scale of the project.'' While USDA has removed this sentence in the main body of the rule, we have retained it for the Technical Reports in Appendix B. We point out that it is the applicant's responsibility to assemble a qualified project team, the exact composition of which will vary from project to project. If an applicant is unsure of what constitutes a qualified project team, USDA advises the applicant to contact their State Office, trade associations, and other knowledgeable persons in the renewable technology field. It is our intent to ensure that applicants adopt good engineering and business practices in developing their projects; it is not our intent to define what those practices are.

Once an application has been received, it will be reviewed by experts in the technology for that project. These experts will be able to assess the qualifications of the proposed project team.

Comment: One commenter, commenting on several sections of the rule (*e.g.*, proposed §§ 4280.111(d)(1)(ii)(A), (C), and (F) and (d)(2)(ii)(F)) suggested inserting the word ''anticipated'' before ''schedule.'' According to the commenter, identifying the schedule of local zoning boards or other governing or adjudicatory councils is not always possible.

Response: USDA agrees with the commenter that there are activities outside the control of the applicant and that the addition of the word ''anticipated'' schedule is acceptable. Therefore, the change has been made.

Comment: One commenter referred to proposed § 4280.111(d)(2)(ii), which states: ''Anaerobic digesters must also be designed and constructed in accordance with USDA anaerobic digester standards.'' The commenter could not locate the standards being referred to and recommended that the actual required USDA standards be listed in the regulation so that the standards are clearly defined.

Response: The standards USDA is referring to are in the process of being developed by USDA's Natural Resources Conservation Service (NRCS) and are not yet available. Because of this, the Agency has elected to remove this requirement from the rule. USDA may revisit this issue once the NRCS standards are available.

Comment: One commenter recommended that applications identify all the major equipment that is proprietary equipment and justify how this unique equipment is needed to meet the requirements of the proposed design. The reviewing team can then determine if the use of this equipment is justified and therefore meets the test of free and open competition prior to the award of grant or loan. In the case of limited competition, the applicant would be required to provide information as to the pre-selection process used to select the designer/manufacturer for their proposal.

The commenter states that the application process addresses the need to provide very specific and detailed information on equipment (many times this involves proprietary equipment), technology, availability of equipment, and vender servicing of equipment information. As stated in proposed § 4280.111(d)(1)(i)(A), ''The applicant must also provide authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life.''

From a procurement side, this many times conflicts with the Federal requirements to comply with ''maximum free and open competition.'' These free and open competition requirements have their roots in OMB Circular A–110 and the Grants Management Common Rule and are passed along to individual agencies via 7 CFR parts 3019 and 3016. One way to minimize problems is to have the applicant pre-qualify equipment, such as outlined in 40 CFR 33.230 (FR 3/28/83) or to utilize the RUS policy statement dated March 28, 2002, as it related to the preselection of equipment:

- Sometimes the selection of a major equipment item can significantly impact the remainder of the project. It is still important to maintain an environment of free and open competition in these circumstances. In cases like this, it may be best to conduct a ''preselection'' process. Two preselection methods can be used. The first method is simply a pre-bid type of competitive negotiation in which manufacturers are requested to submit proposals to the owner on technical merit and prices. The owner and engineer analyze the pre-bids and select the equipment based on price and other factors. The name and price of the major equipment item is included in the construction contract documents used for the competitive bidding of the general contracts. The price of the pre-selected equipment is included in the general contract bid documents to prevent this ''preselection'' process from turning into a sole-source specification.''
- The second preselection method is a phased-bid approach in which the major equipment bid is conducted before the general contracts are bid. The first phase would be a competitive bid for the major equipment item based on technical requirements. One of the selection criteria in this phase may include a pilot test to confirm the equipment can perform as required. After the major equipment item manufacturer is selected, the project design can be finalized, and the remaining contracts bid competitively. Any first-phase contracts are bid with a hold period sufficient to allow for completing design of the remainder of the project and bidding the remaining contracts with the understanding that the first-phase contract(s) will be assigned to a general contractor when the second-phase contract is awarded. The owner discloses the name and price of the first-phase preselected contractor in the second-phase contract bidding documents.''

A proprietary specification is not consistent with free and open competition and should be used only when project requirements are unique, as documented by the design engineer and concurred in by Rural Development, or needed for interchangeability of parts or equipment.

Response: USDA agrees that the application should identify all the major equipment that is proprietary equipment and justify how this unique equipment is needed to meet the requirements of the proposed design. USDA has revised the rule to reflect this for Technical Reports prepared in accordance with Appendix B. In addition, the Agency has made it clear that applicants will use ''open and free'' competition for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

Energy Audits and Assessments

Comment: Four commenters requested that a minimum project size requirement for an energy audit be $50,000. Commenters were in general agreement that energy audits are valuable at projects at this level of costs. One of the commenters suggested that USDA consider lowering the project cost for which an energy audit is required to below $50,000. Two commenters felt that the proposed rule did not clearly state when an energy audit and an energy assessment were required.

Response: USDA agrees with the majority of commenters and is requiring projects with total eligible project costs greater than $50,000 to conduct an energy audit. In addition, these energy audits must be conducted or reviewed by an energy auditor. This requirement is being implemented for all applications. USDA is not lowering it further under this program, but will encourage applicants to utilize an energy audit on all such projects when implementing this program.

The energy audit is a useful tool regardless of the size of the project. USDA believes that, given its cost, it should be required only for projects with total eligible project costs greater than $50,000. Energy audits on lower cost projects are still useful and USDA does not want to discourage applicants of lower cost projects from conducting an energy audit. Therefore, USDA is not requiring energy audits for projects with total eligible project costs of $50,000 or less, but wants to allow those projects the option of using an energy

assessment in lieu of an energy audit. In summary, the sections have been rephrased to make clear our intent—that an applicant is required to conduct an energy audit for projects with total eligible project costs greater than $50,000 and that, for projects with total eligible project costs of $50,000 or less, the applicant is required to conduct either an energy audit or an energy assessment.

Comment: One commenter stated that rule needs to clearly state that an energy audit is required on all energy efficiency projects under the documentation portion of the regulations.

Response: As noted in the previous response, energy audits are not required for all energy efficiency projects. The rule has been clarified to clearly indicate when energy audits are required and when they or energy assessments may be used.

Comment: One commenter stated that USDA may wish to consider the requirements of the project team for energy efficiency improvement projects. The commenter points out that, in the technical report for energy efficiency improvement projects, an energy auditor is a required part of the project team, but an energy audit is not required for projects under $100,000. The commenter recommended that the title of energy auditor be changed to energy auditor/assessor in order to be clear as to how the requirements of an energy audit or assessment for energy efficiency improvement projects would be affected.

Response: USDA has revised the rule to reflect that, for energy efficiency improvement projects with total eligible project cost greater than $200,000, the project team should include ''an energy auditor or other service provider,'' where other service provider can include an energy assessor. For energy efficiency improvement projects with total eligible project costs of $200,000 or less, the final rule requires the applicant to list ''all key service providers,'' which would include an energy auditor or assessor.

The final rule requires either an energy assessment or an energy audit for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs equal to or less than $50,000, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

Self-Scoring

Comment: One commenter recommended that USDA allow applicants to provide preliminary self-scoring to enable complete technical review and scoring based on full applications. Another commenter felt that self-evaluations in which the applicant would review which aspects of their projects needed the most attention and to understand the funding projects would be helpful both to USDA and the applicant. The commenter stated that USDA could then compare their score calculations to the applicant's self-evaluation and confer with the applicant if they differ significantly.

Response: USDA agrees with both commenters. The final rule requires applicants to submit a self-score.

F. Funding

Distribution of Funds

Comment: Several commenters made suggestions on how funds should be distributed between the grant and loan programs. One commenter recommended that a portion of the funds be specifically set aside for grants initially, to be transferred to the loan programs if there are not enough high scoring grant projects available to use all set-aside funding. The commenter recommended that a loose guideline be added to the regulations regarding the amount of money allotted for each type of program. The commenter wants to ensure that the comparatively small energy efficiency project proposals have equal access to funding as larger renewable energy projects. Because of their lower cost, energy efficiency projects are most likely to apply for grant funding, instead of the loan guarantee or (in the future) a direct loan program. The commenter believes that available funds should be distributed evenly between the programs sections.

Another commenter suggested a split of funds between renewable energy and energy efficiency projects. The commenter pointed out that the proposed rule did not elaborate on the policy used in the last two NOFAs of setting aside 50 percent of the funds for energy efficiency projects until all proposals were reviewed. The commenter recommended including the same language from the past two NOFAs in the final rule.

Response: First, this comment is outside the scope of the 9006 program regulation specifically. This comment deals with how USDA will allocate the funds provided to the program by Congress each year. USDA believes that all projects eligible under the 9006 program should have equal access to funds. Each year, USDA will determine what percentage of funds will be allocated to each of the funding programs. In making this determination, USDA will consider these comments and other similar comments with regard to allocations. It is USDA's intent that, if the funds set aside for either grants or guaranteed loans are not entirely obligated, the remaining funds will be made available to the other program.

Comment: One commenter requested that USDA reserve at least 50 percent of the available funds in a program year for direct grants. While loans and loan guarantees provide leverage of Federal dollars, the commenter believes that these will have limited appeal to smaller agricultural producers and rural small businesses and wants to ensure that there are sufficient funds available to support smaller applicants and smaller projects.

Response: As noted in the previous response, USDA will consider this comment each year when we make the initial allocation of funds between the various funding programs. USDA points out that the scoring criteria will result in higher scores for those applications from smaller agricultural producers, which will assist in directing funds to these producers. USDA does not believe we should specifically set aside funds for smaller projects.

Comment: One commenter stated that ''in the alternative, loan guarantees and grants under the proposed rule should be allowed to cover up to 80 percent of the cost of a qualified System.'' The availability of long-term, low interest Federal loans and project suitable grants would significantly increase the number of agricultural-based energy systems and encourage economic development and diversity within the agricultural community.

Response: With regard to the percentage of the loan or grant to be made available to the applicant, the statute sets the limits and USDA cannot increase it to either the requested 80 percent or 100 percent. Therefore, no change to the rule has been made in this regard.

Comment: Five commenters stated that USDA should set aside 10 percent of available 9006 funds, or approximately $2.3 million, for the grant program and allow applications to be made throughout the year until funds are exhausted. Any unused funds could be rolled over to the next year with a corresponding reduction in replenishment funding.

Response: As noted in previous responses, USDA will issue an announcement each year identifying the

amount of funds available and the initial allocation of those funds among grants, guaranteed loans, and direct loans. USDA will consider this and other comments when making those allocations. If funds initially allocated for one funding type (*e.g.,* grants) are not obligated within the fiscal year, USDA may make those funds available to one of the other funding types (*e.g.,* guaranteed loans) within the 9006 program. USDA does not plan to otherwise ''set aside'' any specific amount of funds for any of the funding programs.

Lastly, the commenters suggested that any unused funds be rolled over to the next year. While USDA would like to have this flexibility, Congress determines whether the 9006 program funds must be spent in a given year or can be carried forward.

Comment: One commenter suggested that more of the money be allocated to small farmers and not just large corporations.

Response: The scoring system awards extra points to small agricultural producers and to very small rural businesses, providing the applicants with the opportunity to score higher than larger agricultural producers. USDA believes this is the appropriate method for directing funds to smaller applicants rather than allocating a specific level of funds to small farmers.

Comment: One commenter suggested that grants for emerging applications should be raised up to 50 percent of the installed application of up to 5.0 megawatts (MW) for renewable energy distributed applications.

Response: USDA cannot accommodate the commenter's request because the statute limits the matching funds for grants to 25 percent and USDA does not have the authority to raise this limit.

Comment: One commenter asked why energy audits or assessments, feasibility studies, and business plans are included in this listing of eligible project costs and whether these activities need to be completed before the application is submitted and therefore becomes ineligible. The commenter stated that if these activities do not need to be completed, their applicability needs to be more clearly explained.

Response: The final rule requires energy audits or assessments and Technical Reports. Business-level feasibility studies will be required for renewable energy projects with total eligible project costs greater than $200,000. (In the proposed rule, business-level feasibility studies were required for renewable energy projects with total eligible project costs greater than $100,000.) These activities are included in the list of eligible project costs because they are clearly part of normal project development. Further, these activities must be completed prior to submitting the application because the technical evaluation and scoring of the application cannot be made without this information. Failure to supply this information at the time of the application makes the application incomplete, not necessarily ineligible. USDA will not evaluate or score applications that are not essentially complete. Therefore, applicants are advised not to submit applications without these items, as applicable.

Comment: Two commenters stated that, in FY 2003 and FY 2004, anaerobic digesters were awarded disproportionately funds compared to other renewable energy systems during the same funding periods. A total of $43 million in grant awards were made in FY 03 and FY 04. However, during the same time period, anaerobic digesters were awarded $16 million in grant funds out of the total $43 million over 2 years. A reason contributing to the higher portion of grant funds awarded to anaerobic digesters is due to the high capital costs inherent to the technology.

Anaerobic digesters systems are not solely renewable energy systems in and of themselves. It is only after the investment is made in generator sets, that an anaerobic digester serves the purpose of generating electricity. The main benefits provided for by an anaerobic digester are more effective onfarm manure management and odor control, especially for facilities with large numbers of animal units. Not until the investment is made in the electrical generation equipment does a digester become a renewable energy system. Therefore, awarding one-quarter of a total project cost for a system that serves multiple purposes besides renewable energy generation is not consistent with the intent of the statute.

Commenter recommended considering total project costs associated with the anaerobic digester and energy recovery systems when determining total project costs, but to allow as eligible only those costs directly associated with energy use or production, such as engines, boilers, generators, fuel preparation and delivery systems, electrical interconnections, etc.

Response: The commenter refers to the distribution of funds to the various technologies made under the 2003 and 2004 NOFAs and states that anaerobic digesters were awarded a disproportionate share of the funds. USDA points out that all projects for which funds were sought under these two NOFAs were accepted. Thus, to the extent any one technology received more funds than another reflects the types of applications received and not any bias on the part of USDA to fund one technology over another. In addition, the scoring in the final rule is intended to be technology ''neutral.''

Finally, USDA disagrees with the commenter's recommendation that only those costs associated with the energy use or production be eligible costs. It is USDA's intent that all costs associated with the development of any renewable energy technology project, from the ''ground up,'' and as specified in the rule are eligible costs.

Post-Application

Comment: One commenter noted that project funding is allowed for post application construction or project improvements, except residential. The commenter suggested that USDA add in parentheses after residential (single family or multi-family) or simply say housing landlords are not eligible for assistance.

Response: USDA does not agree that further clarification is needed within the regulation. USDA believes that the phrase ''residential'' plainly includes single family and multi-family residences. If additional clarification is needed, USDA will revise its regulations.

Comment: One commenter expressed concerns that grant funding could not be used for residential projects. The commenter stated that residential and business areas are inseparable on many farms and that forcing farmers to separate such activities would be an undue burden. The commenter recommended that the rule be changed to allow residential-related expenditures when they are clearly business-related expenses or when they cannot be distinguished from business expenses.

Three other commenters recommended that farm-based systems sharing a single meter for residential and business purposes should be allowed.

Response: USDA recognizes that there will be instances where it is impossible to distinguish between residential and business areas. The decision to exclude residential projects was a policy decision on the part of USDA, and we have decided not to make a change as requested by the commenter. USDA made this decision, in part, on the basis of the availability of other Federal programs for residential projects and the availability of numerous State programs for residential projects. USDA believes that it is an unnecessary duplication to

include residential projects under the 9006 program. In conclusion, if an applicant cannot separate residential from business, the project will not be eligible under the 9006 program. Therefore, a single meter measuring residential and business usage is not allowed.

Comment: Two commenters requested that the ''post-application'' period be better defined. One of the commenters stated that it is not entirely clear exactly when the ''post-application'' period begins. The commenter recommended that ''post-application'' be defined as after the date when the USDA officer receives the completed application.

The other commenter believes that there needs to be a clarification of when the project is considered post-application purchase and post-application construction. The commenter questioned whether the applicant cannot initiate any construction until the application is filed, or if the applicant is expected to wait to initiate construction until the application is filed and approved by the Agency (even if the project will move forward regardless if it receives funding). This commenter also suggested using the term ''post-award'' rather than post-application to further clarify and reinforce the concept that the project should not start until funding has been awarded and the necessary environmental review has been done.

Response: USDA agrees that the date the post-application period begins needs to be better defined and further agrees with the commenter that the post-application period begins when the Agency receives an ''essentially'' complete application. An ''essentially'' complete application is one that has all parts necessary for USDA to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation. USDA has incorporated this concept in the definition of ''post-application.''

With the date of the post-application period beginning when the Agency has received the completed application, the rule allows an applicant to incur costs once an essentially complete application has been received by the Agency. The applicant does not have to wait until the application is approved to begin construction. However, if the applicant takes any action that would limit the range of environmental alternatives to be considered or that would have an adverse effect on the environment, the project will be ineligible. Also, if the applicant begins construction prior to submitting a completed application, those costs are not eligible.

Finally, USDA does not see the need to substitute the term ''post-award'' for ''post-application.'' The main difference is that environmental clearance would have been completed by the Agency post-award. Therefore, the applicant would not have to guess, as they do post-application and pre-award, whether their construction would potentially limit the range of environmental alternatives to be considered or have an adverse impact on the environment and thereby make the project ineligible. USDA believes that education of those implementing the program and clarification of this point here is sufficient. Therefore, USDA has not revised the terminology as suggested.

New Construction

Comment: One commenter recommended that the proposed rule, which currently excludes new building construction, unless it replaces a virtually identical facility, be changed such that the incremental cost of energy efficiency and renewable energy relative to standard new building construction could be considered an eligible expense.

Response: USDA believes that there is no objective way to implement the commenter's suggestion and is concerned that to try to implement the commenter's suggestion could lead to abuse. Therefore, USDA has not revised the regulation per the commenter's suggestion.

In-Kind Contributions

Comment: Several commenters were concerned about limiting the in-kind contribution to 10 percent, with most suggesting that it be raised to 25 percent. Commenters generally felt that limiting in-kind contributions would unnecessarily hamper collaboration efforts with such entities as universities, private foundations, and research partners.

Response: USDA believes that 10 percent is a large enough ''window'' to allow universities and other parties to provide the type of assistance they are capable of providing. Nothing in the rule precludes such entities from assisting applicants, and the applicant still benefits at the 10 percent limit. Therefore, USDA has retained the 10 percent limit on in-kind contributions in the final rule.

Comment: One commenter felt that provisions within these sections did not make it easy for the farmer or small business to serve as contractor. The commenter felt that USDA should allow in-kind contributions by farmers or small businesses and should allow farmers and small businesses to serve as contractors ''without so much red tape to save cost and to help leverage Federal funds.''

Response: The scope and complexity of many of the projects that would be funded under the 9006 program would require the use of third-party entities that possess the requisite expertise to construct renewable energy projects and make energy efficiency improvements. Further, if a project is not properly constructed and installed, the applicant can hold the contractor responsible for completing the project satisfactorily. This level of accountability is lost if the applicant is also the contractor. Therefore, except as discussed below, USDA has decided that it is in the best interest of the 9006 program as a whole to prohibit applicants from also being the contractor.

Under the final rule, applicants will be allowed to perform part of the work themselves provided they meet the expertise requirements contained in § 1780.67. As noted above, however, the applicant's in-kind service will not be counted towards the matching fund requirement and will reduce the total eligible costs associated with the project (thereby reducing the maximum amount of funds that could be requested).

Comment: One commenter stated that, although requirements for in-kind contributions were reasonable, strictures against any other Federal co-funding could restrict applications. The commenter observed that an applicant could receive funding from Federal sources other than USDA. Rather than impose a blanket ban on other Federal funding, the commenter recommended that USDA develop a specific list of programmatic funding exclusions.

Four other commenters suggested that co-funding from State rebate programs be fully allowed. Another commenter stated that USDA should allow full co-funding from State public benefit rebate programs.

Response: USDA made an administrative determination that the 25 percent limit for grant funding of a project is applicable to funds received under the 9006 program and all other Federal grants. No changes have been made in the final program. State funding, regardless of source, is an acceptable source of matching funds.

Funding Levels

Comment: One commenter requested clarification of the $750,000 grant limitation per entity. The commenter asked if the limit applies to a single fiscal year. The commenter also asked if the same individual or entity can apply

for that amount the following year as well.

Response: USDA has clarified in the regulation that the $750,000 grant limitation applies to the Federal fiscal year. Applicants may apply for grants (or loans) in successive years, with no limitation. However, if a grantee (or borrower) has not made satisfactory progress towards the completion of projects previously funded under the 9006 program, as determined by USDA, USDA will deny further grant or loan assistance.

Comment: One commenter requested clarification on the relationship of the B&I program and the proposed rule. The commenter asked whether the B&I program guaranteed 50 percent of the loan or 80 percent to 100 percent.

Response: Under the 9006 program, an applicant may request guaranteed loans under both the 9006 program and the B&I program for the same project. In this instance, two loans would be established—one under the 9006 program and the other under the B&I program. The percent guarantee for each loan would be determined based on the respective program. For the 9006 program loan, the percent of guarantee would range from 70 to 85 percent depending on the amount of funds being requested for the 9006 program loan (see § 4280.123(c)). For the B&I program loan, the percent guarantee would range from 60 to 80 percent, unless the Administrator grants an exception in which case the loan guarantee could be as high as 90 percent (see § 4279.119(b)).

Comment: Two commenters suggested that the grants be limited to certain size (kilowatt) restrictions. One of the commenter suggested that grants be limited to systems of 10 kW or less, with the 25 percent grants capped at $15,000. The other commenter suggested that grants would be limited to systems of 200 kW or less, with the 25 percent grants capped at $50,000.

Response: USDA believes there should be an emphasis on small projects. However, USDA believes it is important for the program to be available to as many eligible projects as possible. Consequently, USDA disagrees with the approach used in this comment to place emphasis on small projects. Instead of adopting the size limitations suggested by the commenter, USDA has decided to emphasize small projects by awarding them priority points. Although the approach is different, we believe this captures the concern of the commenter.

Comment: Several commenters commented on the minimum funding level proposed for grant applications.

Several of the commenters supported the minimum funding amount of $2,500. In general, these commenters stated that this level will encourage small agricultural producers or rural small businesses to apply for funding, that projects requiring additional assistance under $2,500 are not likely to benefit in any sustainable way from the additional assistance, and that the $2,500 amount also potentially allows additional leverage for a larger number of projects to be funded.

Two commenters, on the other hand, requested that USDA lower the minimum funding level. One of these commenters stated that the majority of their company's audit reports recommend installing a mix of equipment that costs between $6,000 and $10,000. Since there is a $10,000 minimum equipment cost that farmers must reach in order to be eligible for Section 9006 grants, many small farms that can achieve significant energy savings are not eligible to apply for any assistance. These small farmers comprise the group targeted by Section 9006 as needing the most assistance, yet with the proposed rule they are left out. One of the commenters recommends that, in order to best serve the small, possibly struggling farms, USDA consider lowering the minimum equipment cost.

The other of the two commenters requested USDA to clarify these criteria to allow applications that combine small energy efficiency projects. Although energy-efficiency projects can take the form of large capital projects, they are often improvements and upgrades to existing equipment and facilities. As such, energy-efficiency projects do not always involve large capital expenditures. Given that small farms and other rural small businesses are a major target audience, it is likely that total project costs for many individual energy-efficiency projects will fall under $10,000 (making them ineligible for grants assuming a minimum grant of $2,500 with a 75 percent cost-share) or even $5,000 (making them ineligible for guaranteed loans, assuming a minimum loan of $2,500 with a 50 percent cost-share).

Response: USDA proposed the $2,500 minimum funding level because the Agency recognized the application process, as proposed, was such that it would be unlikely that projects costing less than $10,000 would apply for funds under this program. However, with the simplified application process that allows applicants to submit a less detailed application, we believe that the minimum funding level can be reduced to help attract additional, worthwhile projects. Based on the commenters' suggestions, we have set the minimum funding level at $1,500 (equivalent to $6,000 in total eligible project costs at the 25 percent funding level) for energy efficiency improvement projects.

Comment: Two commenters expressed concern over the minimum funding amount of $2,500 for guaranteed loans. Both commenters stated that it is not practical or economical to complete the paperwork process for that small of a loan. One of the commenters recommended that the minimum funding level be raised to $100,000. The other commenter recommended at least $50,000. According to this commenter, it is generally not worth anyone's effort for the documentation and costs associated with a guaranteed loan to look at anything less than $100,000.

Response: In the final rule, USDA has raised the minimum amount for a guaranteed loan from $2,500 to $5,000. If the new minimum amount is still not practical or economical to complete the paperwork process for that size loan, then a lender is not required to participate in that loan.

Comment: One commenter requested additional clarification to determine the collateral positions/requirements if the maximum loan request was applied for under this rule and another loan was requested under the regular B&I program.

Response: Where joint financing is being secured by the same assets, a parity lien position will be taken.

Other Funding Mechanisms

Comment: One commenter suggested that commercialized systems should also be eligible for the USDA loan program either under Section 9006 or Farmers Loans or via the Rural Utility Service (RUS).

Response: Commercialized renewable systems are eligible under the 9006 program. Commercial systems producing electricity are eligible for funding under the RUS programs. However, the Farmers Home Administration is no longer in existence. To determine whether or not RUS programs are of interest to an entity, that entity should contact RUS directly.

G. Evaluation/Scoring of Applications

General

Comment: Three commenters stated that, in FY 04, USDA awarded several grants to applicants who also received grants in FY 03. The commenters recommended that the rules discourage multiple applications by the same

entities by awarding 5 points to applicants that have not been previous funding recipients and by limiting funding for all project phases at a single site to 2 years. According to the commenters, these two conditions would help to spread the Section 9006 funding resources among the broadest possible number of applicants and in broader geographic areas.

Response: USDA has revised the regulation to award 10 points to applicants who have not received funding in the 2 previous Federal fiscal years. USDA, however, disagrees that funding at a single site should be limited to 2 years or to any number of years. USDA believes that each application should be evaluated on its own merit without regard to previous applications made for projects at the same site. By evaluating each application on its own merit, USDA ensures that funds will only go to projects with significant merit.

Comment: One commenter felt that the evaluation criteria were not detailed enough and did not account for the noneconomic benefits of any particular project. The commenter recommended incorporating the following weighted considerations into evaluation criteria:

- Business Impact, 25 percent.
- Technical Merit, 35 percent.
- Environmental Benefits, 10 percent.
- Replicability, 10 percent.
- Small Applicant, 10 percent.
- Rural Economic Development, 10 percent.

The commenter also provided extensive justification for his recommendations.

Response: USDA has modified the criteria for scoring in the final rule, taking into account this comment and others. In terms of this commenter's suggestions, we have added or modified the criteria for technical merit, environmental benefits, commercial availability (replicability), and small applicants. We have not added a criterion for business impact, although within the technical merit criterion we have included a subcategory on financial and market assessment. Lastly, we have not included a rural economic criterion. Eligible projects must be located in rural areas and thus, we did not see this suggested criterion as adding value to the scoring process.

With regard to the weighting suggestions, USDA has re-scored the criteria as we deemed appropriate, to give higher weighting to applications from smaller agricultural producers, very small businesses, and small projects. We think this is appropriate to further the goals of the authorizing statute.

Comment: One commenter expressed two concerns with the evaluation of grant applications: Inconsistencies in how the evaluation criteria are applied; and a disconnect between the kinds of projects that score well based on these criteria and projects that have a good chance for success or even being built. The commenter provided suggestions for procedures and language to address the scoring inconsistencies and ways that the evaluation criteria can be improved in order to better reward stronger projects, including ensuring that State Offices submit the entire application along with the assigned scores, providing more training to State Offices responsible for administering the program, and implementing a system to compare scores between renewable energy and energy efficiency projects. With regard to the last suggestion, the commenter stated that because the evaluation criteria for the two categories of grant applications are different, it is important that USDA have the ability to compare the projects to each other when distributing the last bit of funding each year. The commenter believes that a low-scoring energy efficiency project should not be funded over a relatively higher scoring renewable energy project if funds for renewable energy projects are exhausted more quickly (and vice versa). The commenter suggested one possible method for comparing scores: calculate a percentage of points earned by an applicant by dividing points awarded by the total points possible. This percentage could be used to compare renewable energy and energy efficiency projects when allocating the last of the funds available each year.

Response: In order to ensure consistent results, USDA is standardizing its evaluation materials and providing for a review of all initial scoring. With regard to the assertion that there is a ''disconnect'' between projects that score well and those that have a good chance for success or even being built, USDA has implemented in the final rule a scoring criterion on technical merit. This should alleviate the asserted disconnect for projects ''that have a good chance for success.'' However, it is nearly impossible to establish within a regulation whether or not a funded project will actually be built by an applicant. USDA believes that only applicants who actually intend to build their projects will expend the effort to submit an application.

Finally, with regard to scoring between renewable energy projects and energy efficiency improvement projects, in the final rule, USDA has revised the points to equalize the maximum points that can be scored by the two project types. This change puts all projects on equal footing and allows a direct comparison of scores. USDA notes that an applicant is allowed to submit applications for a combined renewable energy project and energy efficiency improvement, and each application will be evaluated separately based on its own merit.

Comment: One commenter suggested that innovative projects leveraging different sources of funding (loans, guarantees, and grants) should receive the highest priority eligible for grants.

Response: USDA disagrees that different types of funding should serve as a criterion for scoring applications. USDA does not believe that combining different sources of funding is important in determining which projects receive funding, and therefore has not adopted the commenter's suggestion.

Comment: One commenter recommended that USDA recognize and utilize existing support infrastructure to assist in grant and loan evaluations. Existing programs within USDA could be tapped to promote prequalification screening, build grants-response assistance, and supply project development workshops with necessary materials.

Response: USDA plans to develop training and assistance material to help applicants utilize the 9006 program. However, we have not included pre-qualification screening to the program because applicants can and are encouraged to seek advice from their State Office prior to beginning the application process to assess their project.

Comment: One commenter noted that, as proposed, the applicant is required to create financial projections for a proposed project. In doing this, there are no required formats and no checks on whether a given set of projections is reasonable. As a result, two similar projects could have very different financial projections and paybacks. For example, one wind project might have a realistic assumption for maintenance and insurance costs while another might have underestimated these. The State Rural Development staffs do not have the knowledge to catch these inconsistencies. Similarly, the technical reviewers at NREL might only catch these discrepancies if they were way out of line, for example, by a factor of two or more for significant expenses.

To address this evaluation problem, the commenter recommends that USDA, with the assistance of NREL, develop standard industry metrics and financial templates for the most common project types. Based on the first 2 years of the

program, these project types should be small wind, utility-scale wind, and anaerobic digesters. By having these metrics and templates, a project with unrealistic assumptions would be easily 'red flagged' by reviewing staffs and, potentially, receiving either a revised score or a qualified evaluation by reviewing staffs.

Response: The Agency agrees with the concept put forward by the commenter. We do not believe, however, it is necessary to have these incorporated into the rule implementing the 9006 program. We believe that such industry metrics and financial template would be better developed by experts in the industry with input from the U.S. Department of Energy (DOE), the U.S. Environmental Protection Agency (EPA), and USDA. Such material could then become part of the implementation tools being developed to assist in the implementation of the 9006 program.

Comment: One commenter stated that, currently, State Rural Development staffs score an application based solely on information provided by the applicant. It is our understanding that Rural Development staffs then document how these scores were derived and forward this annotated score sheet to DOE/EPA technical reviewers, along with the technical feasibility study. They do not, however, forward the complete application package including financial pro formas. As a result, technical reviewers must rely on State staffs to evaluate the projects on financial grounds. The commenter recommended that USDA State Offices forward the complete application packet to technical reviewers so that financial information can be evaluated in more detail.

This same commenter stated that Rural Development staffs assigned to this program are, for the most part, not trained to evaluate renewable energy and energy efficiency projects, either on technical or financial grounds. Yet they are being asked to provide preliminary scoring for these projects before forwarding applications on to NREL and then USDA headquarters. The commenter believes that the role of the State Offices in reviewing applications should be solely to verify that applications are complete, applicants and projects are eligible for funding, and additional sources of funding, interconnection agreements, and other qualifying conditions have been documented. At that point, complete applications should be forwarded to NREL or other assisting agencies for technical and financial review, as well as project scoring. In addition, NREL should be provided discretion to adjust scoring up or down from what an applicant claims based on their expert judgment of realistic energy and financial performance of the proposed project.

Response: Under the 9006 program, it is the Agency's intent that State Office staffs review the application to determine applicant eligibility, project eligibility, application completeness, environmental assessment, and other qualifying conditions, and to assign a preliminary score to the project. The Agency believes that State Office staffs are competent to provide preliminary scoring of the applications.

The State Office will then forward the entire application, including financial information, to the technical reviewers (*e.g.*, NREL, DOE). The technical reviewers will evaluate financial and technical information separately and in tandem. The technical reviewers will be responsible for scoring the project on their own. Under this process, the technical reviewers will not adjust the State Office's preliminary scoring, but will provide USDA with a recommendation based on a comprehensive evaluation.

Once the technical reviewers have completed their review of the application, they will return the entire application with their recommended score for the application to the State Office. The State Office will then forward the entire application to the National Office. The National Office will make the final determination of the score to be assigned to each application. The National Office will use a committee composed of experienced business and financial people to make adjustments to the score. USDA is the Agency responsible for the 9006 program and its allocation of funds to projects.

Comment: One commenter stated that the regulation language was unclear as to how the technical review would be conducted. The commenter did not feel that traditional lenders would be capable of performing a technical review and recommended that USDA retain the technical review function.

Response: While it is unclear to the Agency as to why the commenter thought this would be conducted by a lender, as stated in the previous response, USDA intends to retain the technical review function for all proposed projects.

Comment: One commenter asked USDA to clarify whether the criteria to be "* * * individually addressed in narrative form on a separate sheet of paper" are to be addressed by the Agency or the applicant.

Response: The sentence referenced by the commenter should have referred to the applicant. In the final rule, this has been replaced with the requirement for the applicant to self-score the project.

Comment: One commenter suggested that scoring be geared toward capturing measures that are easily replicated.

Response: We agree with the commenter that scoring should be geared toward measures that are easily replicated because this provides for objective scoring. We have changed some of the scoring criteria significantly since the proposal. We believe that the scoring criteria included in the final rule are necessary from both a statutory perspective and an evaluative perspective. We have tried to make each measure as replicable as possible, but recognize that for some criteria (*e.g.,* technical merit), this is essentially not practicable.

Ineligible or Incomplete Applications

Comment: One commenter stated that as written, it leads to the conclusion that a decision that an application is incomplete can be appealed when in fact it may be a decision subject to review rather than appeal. The commenter, therefore, suggested that between the words "any" and "appeal" add the phrase "applicable review or."

Response: A determination by USDA that an application is incomplete is subject to 7 CFR part 11, and we believe this is sufficiently clear so that no change is necessary.

Energy Efficiency Techniques and Practices

Comment: One commenter suggested that additional points be given to applications for renewable energy systems that specify energy-efficient procedures and behaviors in their management plans. The commenter believes that energy-efficient techniques and practices developed with today's farming equipment can improve a farm's receptiveness to new technologies and, therefore, improve the eventual payback of renewable energy projects. The commenter further maintains that behavioral and procedural project elements require no capital investment, and can be incorporated into project management plans for renewable energy systems.

Response: While USDA agrees that management plans that incorporate specific energy-efficient procedures and behaviors are to be applauded, such measures cannot be measured at the time an application is submitted. It is possible that a management plan incorporating specific energy-efficient procedures and behavior is never fully

implemented, while a management plan that does not address these items is implemented in a fashion that incorporates these measures. USDA does not believe, in the end, that these measures can be objectively evaluated at the time of application scoring and, therefore, has decided not to incorporate this suggestion in the final rule.

Energy Replacement and Generation

Comment: One commenter pointed out that producers who seek to provide energy directly to their operators can earn at most 20 points for the quantity of energy produced. According to the commenter, the program was written to benefit both larger and smaller systems. The commenter urged the Department to increase the opportunity for smaller systems to compete by reducing the points awarded to systems intended primarily for sale to no more than 10.

Another commenter recommended that USDA adjust the scoring system to reward higher value on-site generation, which offsets retail energy costs, rather than commercial generation of electricity sold at wholesale rates.

Response: USDA agrees with the commenters and has reduced the points associated with the generation of energy.

Comment: One commenter requested that case-based optimization and integration be used and be better developed in this rule. According to the commenter, the proposed point weightings arbitrarily establish an ''either-or'' condition not stemming from the 2002 Act. The commenter states that, for most onsite energy projects, strict dedication to electric generation may be only marginally economical as stand-alone applications, while economies and efficiencies can be improved through better combined heat and power (CHP) integration to serve both facility thermal and electric loads. This ''case-optimized'' level of project improvement couples design-based energy efficiency with installation of a renewable energy generation package but requires a different weighting of criteria.

Response: USDA generally agrees with the commenter and the revisions we have made to the final rule should address most of the commenter's concern. In the final rule, applicants can receive points based on one of three scenarios—energy replacement, energy saving, or energy generation. These scenarios are not focused on electric generation. CHP projects that are installed primarily for self-use by the agricultural producer or small business should score well under the energy replacement scenario compared to projects that are strictly electric generation projects.

Comment: One commenter asked if a renewable energy project can be shown to offer significant increases in energy efficiency through optimal use of thermal energy in addition to electrical energy, will preference for CHP integration be given over ''electric-only'' project design.

Response: While USDA acknowledges that CHP integration projects are inherently more efficient than electric-only project designs (producing more energy per unit input), we have not given direct preference to CHP integration projects in the final rule. Instead, because they are inherently more efficient, such projects will score higher than electric-only projects during the scoring of applications. USDA believes this is the best way of encouraging such designs within the overall framework of the 9006 program.

Comment: One commenter suggested changing the last two words in proposed § 4280.112(d)(1)(i)(A) from ''utility company'' to ''current energy supplier'' because some projects may be replacing propane and the propane company will not necessarily be a ''utility company.''

Response: USDA has deleted the last sentence in the referenced paragraph, because we deemed it to be only guidance and, thus, not necessary to the final rule. USDA notes that we agree with the commenter's point that some projects may be replacing propane, but with the elimination of the sentence, we do not need to further address this comment.

Comment: Four commenters stated that USDA should clarify whether ''energy replacement'' refers to total use for the farm/business or replacement of just one source of energy consumption (*e.g.*, hot water or irrigation pumping). This is important, as a potential project could significantly replace the energy used in one farm or business activity while having less of an impact on the enterprise's overall energy use. As long as the renewable energy project is related to a measurable use and specified application of energy (*e.g.*, propane consumption for hot water or electricity consumed for irrigation), then the applicant should not have to measure energy replacement against overall energy use but just against that specified source of energy consumption.

Another commenter stated that clarification is needed regarding the base of energy use against which the energy replacement will be measured. That is, if a farmer is planning on generating electricity, is the base amount the energy bill for the entire farm enterprise, for only the farmstead, or for only one grain elevator? This commenter felt that either of these could be a legitimate base.

Response: USDA agrees with the commenters that energy replacement should be measured against the energy consumption of the specific source being replaced and not against the overall energy consumption of the business. USDA, therefore, has reworded this criterion to reflect the commenters' suggestion. In the final rule, we have indicated that the base is the: ''estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application.''

Comment: One commenter suggested that a definition of what constitutes the ''baseline'' for baseline energy usage as discussed in proposed § 4280.111(d)(10)(iii)(A), may be helpful to applicants and reviewers in evaluating a project. The commenter asked if the ''baseline'' is considered as the current energy usage and if the baseline can be considered for a production improvement project. In many cases, according to the commenter, energy efficiency projects are implemented in conjunction with production increases. This may result in a net increase of energy usage but allows for a reduced amount of energy required per unit of production. The commenter suggested that ''baseline'' be defined as: Total energy consumption during production by a process or facility.

Response: While we have not added a specific definition to the rule for ''baseline'' energy usage, we have clarified in the evaluation criterion, as noted in the previous response for energy replacement, that the baseline is the ''estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application.'' We believe this provides sufficient guidance for determining baseline energy usage for energy efficiency improvement projects.

As noted in a previous response, while we have not revised the definition of energy efficiency improvement, we have retained the phrase ''that reduces energy consumption.'' This allows an applicant to express the reduction in energy consumption in a number of ways, including, but not necessarily limited to, energy saved per unit of production.

Environmental Benefits Criterion

Comment: Several commenters suggested that this criterion specifically identify environmental standards (in addition to health and sanitation standards) and that additional points be

given to projects that exceed applicable environmental, health, and sanitation standards. Some commenters objected to the awarding of points to applicants whose projects end up just meeting the applicable standards.

Response: USDA has determined that this criterion should focus on environmental goals, as suggested by the commenters, but should not address health and sanitary standards. Therefore, USDA has revised this criterion to address only environmental goals, which awards points to those projects that contribute to the environmental goals and objectives of other Federal, State, or local programs.

Comment: One commenter stated that the criteria listed in the proposed rule, ''to upgrade an existing facility or construct a new facility required to meet sanitary standards,'' limits greatly the amount of environmental benefit that could be reported as required by the statute. Some suggestions would be to report the amount of nitrogen oxides, sulfur oxides, hydrogen sulfide, and other pollutants prevented, as well as the reduction of fossil fuels consumed due to the installation of the system. Other environmental criteria may also examine the potential impact on local water quality and wildlife.

Response: As noted in the previous response, USDA has revised this criterion to only address ''environmental goals.'' The environmental goals are intentionally worded broadly to allow applicants the flexibility of determining which goals and objectives can be considered, including emission reductions. In order to obtain the points associated with ''environmental goals,'' the applicant must provide documentation from an appropriate authority supporting the applicant's claim.

Comment: Three commenters pointed out that Congress specified that USDA should take into account ''the expected environmental benefits of the renewable energy system'' in considering the amount of a grant or a loan. The Department proposes to assign points for environmental benefits only if the project is helping an operator to comply with an existing law or regulation (''to upgrade an existing facility or construct a new facility to meet applicable health or sanitary standards''). The commenters suggested that the Department should reconsider this criterion in the proposed rules. Since everyone is subject to the same laws, we believe the Section 9006 program should not subsidize compliance with the laws. The commenters believe that the government should not be in the business of paying entities to comply with the law. To resolve these concerns, the Department should make clear that the term ''environmental benefits'' in the statute means the expected or likely quantifiable pollution reduction or other environmental gains by a particular project.

Response: In revising this criterion, USDA believes that projects that ''contribute'' to environmental goals and objectives should receive points. USDA does not believe this contribution needs to be limited to exceeding such goals and objectives.

Comment: One commenter recommended changing the end of the last sentence from ''is needed and required to meet the standard'' to read ''will result in the standard being met.'' Many environmental regulatory agencies will not proscribe a single means to attain a standard so the suggested wording allows for the ''more than one way to skin a cat'' approach to be allowed.

Response: Because of the change in this criterion, as noted in previous responses, this suggestion is no longer valid.

Commercial Availability Criterion

Comment: One commenter asked why the project would gain an additional 10 points when a project is not even eligible for the 9006 program if it is not replicable and commercially available. The commenter also asked what the appropriate way would be to address the use of foreign technology. For example, the commenter asked if a renewable energy system in use in Germany, but never has been utilized in the United States, is considered commercially available and replicable for the 9006 program. Lastly, the commenter asked if there any regulations restricting the use of foreign technology, engineering, and imported products.

Response: The project eligibility criteria include the requirement that a project be either pre-commercially available or commercially available. This criterion provides points for those projects that are commercially available, whereas a pre-commercial project would not receive any points under this criterion. USDA has decided to keep this criterion in the final program.

Commercial availability and replicability of technology in a foreign country does not translate to commercial availability and replicability in the United States. To meet these requirements in the United States it will be necessary for the foreign firm to have a business presence in the United States to support the applicant in the design, purchase, operation, and maintenance of the technology provided, and there will need to be sufficient operating experience by U.S. operators. If there are no operating units in the United States, the technology will normally be considered pre-commercial without adequate and serviceable performance and service guarantees from the foreign supplier. Otherwise, there are no restrictions in this regulation on the use of foreign technology, engineering, or imported products.

Small Agricultural Producer

Comment: Several commenters stated that the criterion for small agricultural producers needed to be revised to provide more points and to reduce the gross market value associated with this criterion.

Response: USDA agrees with the commenters that more points need to be given to small agricultural producers and that the threshold for obtaining the points needs to be adjusted. In the proposed rule, agricultural producers with less than $1 million in gross market value would have received 10 points. In the final rule, we have reduced the gross market value to $600,000 and the awarded points to 5. In addition, we have added one additional condition under which additional points can be awarded. Specifically, if the gross market value is less than $200,000, the applicant will be awarded 10 points. In the final rule, we also award 10 points to rural small businesses that meet the definition of ''very small business'' (*i.e.*, a business with fewer than 15 employees and less than $1 million in annual receipts).

Cost Effectiveness Criterion

Comment: One commenter recommended considering simple payback and simple payback periods when granting loans. The payback considers the initial investment costs and the resulting annual cashflow. The payback time (period) is the length of time needed before an investment makes enough to recoup the initial investment. But the payback method does not account for savings after the initial investment is paid back from the profits (cashflow) generated by the investment (project). This method is a ''first-cut'' analysis to evaluate the viability of investment.

Response: The Agency agrees with the commenter and has retained the simply pay-back criterion under return on investment in the final rule. In addition, applicants are required to provide in their Technical Report an analysis of the proposed project's financial performance, including the calculation

of simple payback. This financial performance analysis includes, but is not limited to, investment and production incentives, loans, grants, expected energy offsets, and ''other information necessary to assess the project's cost effectiveness.'' Thus, the applicant has the opportunity in the financial performance analysis to address savings after the initial investment is paid back.

Comment: One commenter recommended altering the evaluation points system for cost effectiveness to give greatest priority to energy-efficiency projects with payback of 2 to 5 years. The commenter states that projects with payback under 2 years are financially strong inherently, and, therefore, may not require subsidy. The commenter points out that many energy-efficiency projects display 2 to 5 year paybacks, yet sustain savings well beyond year 5, with a large potential for energy savings.

Response: USDA agrees that the length of payback is important. In fact, USDA is encouraged by the 9006 statute to focus on payback. USDA also agrees that projects with different paybacks should be treated differently. However, USDA differs on how those with different paybacks should be treated. In the final rule, USDA gives higher priority points to projects with the paybacks of less than 4 years, a lesser priority to projects with paybacks of between 4 and 7 years, and even less priority to projects with an 8 to 11 year payback. USDA believes that projects with very short paybacks will not likely need to participate in this program and consequently the concern raised by the commenter will be reduced, if not eliminated.

Matching Funds Criterion

Comment: One of the commenters suggested that USDA should correct the apparent discrepancy in requiring applicants to exhibit financial need while awarding higher points if the applicant is able to provide greater than 85 percent of the total project cost.

Two other commenters also believe that the rule seems to discriminate against applicants with financial need because applicants receive more points for requesting a smaller share of total project costs.

Response: The availability of matching funds is a key indicator of an applicant's readiness to proceed with the proposed project. However, USDA agrees with the commenters that the approach used in the proposed rule seemed inconsistent and discriminatory as described by the commenters. Therefore, we have made two significant changes to this criterion in the final rule. (**Note:** In the final rule, this criterion has been renamed ''Readiness.'')

First, in the proposed rule, this criterion awarded points based on the matching funds provided by the agricultural producer or the small business. In the final rule, this criterion awards points based on matching funds to be provided by sources other than the agricultural producer or small business.

Second, in the proposed rule, this criterion awarded points based on the amount of matching funds being provided by the applicant. In the final rule, points will be awarded on the basis of the percentage of the matching funds for which an applicant has received commitments from the sources providing those funds prior to receipt of the complete application by the Agency. For example, an applicant who has received commitments for 100 percent of the matching funds is awarded more points than an applicant who has received commitments for 75 percent of the matching funds.

Note that the revised criterion does not address the percent of matching funds as in the proposed rule. Thus, for example, an applicant providing 50 percent of the matching funds and an applicant providing 85 percent of the matching funds both receive the same number of points if they both demonstrate they have 100 percent commitments of the sources providing the matching funds.

Management Criterion

Comment: Several commenters expressed concern with this criterion and recommended that USDA eliminate it. One of the commenters pointed out that it is important for USDA to focus funding on projects with a high likelihood of success, but awarding points to professionally managed projects is misguided and unnecessary to further this objective. Providing additional points to projects utilizing professional managers favor larger projects for which such management is a necessity. This goes against a program goal to support modestly sized projects and discourages the active participation of individual farmers and small businesses in managing their systems. Farmers who are active in the management of their own systems see the benefits first-hand and serve as a vital conduit for communicating the benefits of such systems to other farmers, thus helping to increase their adoption. The commenter urges USDA to remove the management criterion for the evaluation criteria, and suggests that the likelihood of success of an application can be adequately determined from other criteria.

Three of the commenters stated that the Department proposes to award 10 points to renewable energy projects managed by third-party operators. The commenters recommended that the Department eliminate this criterion. First, this proposal penalizes applications for smaller modular systems (for example, solar hot water and photovoltaic systems, small wind turbines) that may require occasional third-party maintenance but which certainly do not require ongoing outside management. Second, this evaluation criterion is contrary to the Section 45 Federal Production Tax Credit rules which require a renewable energy project owner to be ''actively involved'' in day-to-day management of the project (or have sufficient passive income) in order to be eligible to utilize the credits. Third, only the largest projects are likely to involve outside contractors or managers. The commenters feel this criterion is a ''one size fits all'' condition that discriminates against good projects that do not require outside management.

Another of the commenters stated that he would not give 10 points here. The commenter's experience over 2 years of applications shows that almost all applicants are given these points, if for no other reason than by merely stating they will have a third party do the monitoring. This criterion does not distinguish one application from another, and the quality of the management team is not something one could easily evaluate in a review of these applications anyway.

Two other commenters expressed concern with awarding 10 points if a renewable energy system will be monitored and managed by a qualified third-party operator. One commenter stated that they had a wind farm application last year that was not funded. The applicant has owned, operated, and maintained wind turbines for about 10 years, and they are qualified to monitor and manage their own wind turbines. However, they lost 10 points because they did not hire a third party. The other commenter stated that this stipulation will penalize applications for smaller projects that may require occasional third-party maintenance, but do not need ongoing outside project management. Only the largest projects are likely to have third-party management, and third-party management is no guarantee for a more effective, efficient run project compared to a farm operator or small business owner. This criterion is also contrary to the Section 45 Federal Production Tax

Credit rules which require a renewable energy project owner to be ''actively involved'' in the day-to-day management of the project.

Response: USDA agrees with the commenters and has removed this criterion.

Comment: One commenter stated that management is another evaluation criterion that was subject to the interpretation of the scorer as to what constitutes a ''qualified third-party operator.'' For example: The best option for providing construction, operations, and maintenance services for large wind turbines is often the company that manufactures the wind turbine. In FY 2004, there was at least one case where an application received zero points for using the turbine manufacturer as a third-party operator. In at least two other States, very similar applications using this same management plan (and the same turbine manufacturer) received the full 10 points. The commenter recommends that for wind energy proposals, the turbine manufacturer should be considered a ''qualified third-party operator.'' More direction on which entities can be considered a ''qualified third-party operator'' is necessary. This section also does not specify how long of a contract the applicant needs to have with the third-party operator, which could be a source of some confusion. The commenter suggested requiring 5 years in order to qualify for full points.

The commenter also expressed concern that this category seems to penalize smaller projects where third-party management might not have any particular benefit or even be available. The commenter recommends that this category at least be clarified so that points are awarded for projects with well-qualified third-party managers appropriate for their technology. This category should award points for any project that presents a good management plan as determined by the technical review committee. If a fair system for awarding points across technologies is not practical, USDA should consider eliminating it altogether. The goal of awarding projects with a high probability for success might be better served by a category based on technical merit.

Response: As noted in the previous response, USDA has eliminated this criterion from the final rule. Therefore, there is no need to address the specific comments raised by this commenter.

Comment: One commenter suggested that the ''project management'' criterion should be applicable to energy efficiency activities that support renewable energy projects.

Response: As noted above, USDA has elected to drop this criterion for renewable energy projects and, therefore, does not deem it reasonable to include it now for energy efficiency improvement projects. Therefore, USDA has not included project management as a criterion in the final program for energy efficiency improvement projects.

Interest Rate Criterion

Comment: Three commenters recommended deleting this evaluation criterion. According to the commenters, assigning points based on lower loan rates disadvantages applicants who are not able to get these terms from their lenders. While an inability to get these favorable interest rates may reflect the perceived underlying risk of a borrower or project, the commenters point out that it may also reflect the unfamiliarity with renewable energy and energy efficiency systems by rural lenders. Because the borrower is already paying these higher rates, commenters do not believe that the borrower should also be handicapped by not qualifying for these points in USDA's evaluation criteria.

Response: USDA has retained this criterion because it provides some incentive to lenders to keep their rates low. In addition, we have revised the threshold for receiving points for a low interest rate from 1.75 to 1.5 points above the prime rate (to be consistent with the B&I program).

Comment: One commenter noted that, in evaluating loans, the proposal recommended giving the same number of points (5) for rates below the prime rate plus 1.75 percent and for rates below the prime rate plus 1 percent.

Response: The commenter is not correct. A total of 10 points was possible under the proposed rule—5 points if the first condition is met plus an additional 5 points if both conditions are met. While this is still the case, we have revised the language in the final rule to make this clearer.

New Criteria

Comment: Several commenters suggested USDA adopt additional scoring criteria.

One commenter suggested that USDA award bonus points for projects which use wind turbine designs evaluated by an independent third-party program.

One commenter suggested that USDA award bonus points for programs which integrate dispatchable energy generating schemes with wind energy generation to increase total reliability and value and for programs which create diffuse, large-scale, regional, on-farm, integrated wind-farms. The bonus points should be sufficient to ensure that farmers choose to collaborate in a ''cooperative'' program.

Three commenters suggested that USDA consider adding scoring provisions that consider geographic diversity to assist the Agency in cases of otherwise equal application scores.

One commenter recommended that projects which benefit low-income families should be awarded additional points.

Response: As discussed below, USDA does not consider it necessary to include these criteria in the scoring of an application.

USDA does not believe that scoring criteria should favor one technology or design over another, but each project should be evaluated based on its own technical merit; therefore, USDA has decided not to award points for projects that use wind turbine designs evaluated by an independent third-party program. However, project designs with strong technical merit will receive additional priority points.

USDA agrees with the second commenter's first comment that proposals that integrate interruptible energy generating schemes with wind energy generation to increase total reliability and value are desirable. However, USDA has decided that such schemes are adequately addressed when evaluating the overall technical merit of a proposed project and has decided not to award points strictly on the commenter's suggested basis.

USDA agrees that the model suggested by the second comment of the second commenter can be a successful business model. However, USDA does not believe that it should be the purpose of the 9006 program to favor one business model over another and, therefore, the suggested criterion has not been adopted.

USDA does not believe the scoring criteria for applications should favor one region of the country over another, but should remain focused on the quality of the proposed projects. Therefore, the suggested criterion has not been adopted.

USDA has not incorporated a specific criterion for low-income families. The criterion that provides points for small agricultural producers and very small businesses addresses, to some extent, the income level of the applicant.

Comment: Three commenters suggested that USDA include a criterion that considers the technical or overall merit of the project, which would help further USDA's goal of funding projects with a high likelihood of success. One of the commenters provided a sample of how this category could be

quantitatively scored by the technical review team.

Response: USDA agrees with the commenters and has included a ''technical merit'' criterion in the scoring for both renewable energy projects and energy efficiency improvement projects.

Comment: One commenter suggested that criteria be expanded to encourage diversity of awardees in terms of the type of farm operation and scale of operation.

Response: USDA does not believe the scoring criteria for applications should favor one type of farm operation over another, but should remain focused on the quality of the proposed projects. Therefore, the suggested criterion has not been adopted.

With regard to the scale of operation, the rule already takes scale into consideration by awarding additional points to small agricultural producers and to very small businesses.

Comment: One commenter noted that the proposed rule makes no distinction between applicants who have received previous funds through the 9006 program and those seeking funds for the first time. To achieve the program goal of assisting the greatest number of farmers and small businesses in need, the commenter suggested that points be awarded to applicants who have not received prior funding through the 9006 program.

Response: USDA agrees with the commenter that one of the goals of the 9006 program is to provide access to as many different applicants as possible. As noted previously, USDA has revised the regulation by awarding 10 points to applicants who have not received a grant award (or loan) within the previous 2 Federal fiscal years.

Comment: One commenter noted that States with local expertise have received a disproportionate number of grants. To help correct this, the commenter recommended that USDA encourage participation from regions that have received limited funding by awarding 5 points for applications from an underrepresented State.

Response: USDA has not incorporated this commenter's suggestion. As noted previously, USDA will work with State Offices to help them implement this program and conduct outreach. USDA believes this will correct any ''underrepresentation'' and that it is not appropriate for the scoring criteria to assume that responsibility.

Comment: One commenter suggested that USDA award bonus points for projects which use wind turbine designs evaluated by an independent third-party program. The bonus points should be sufficient to ensure that farmers choose the best options available.

Response: USDA does not consider it necessary to include this criterion in the scoring of application and has not adopted it. USDA will score the Technical Merit of each proposed project on the basis of the proposed technology and the information in the application, not on the basis of who has reviewed the proposed project prior to USDA receiving the application. To ensure the highest technical merit score, USDA encourages all applicants to select the best available technologies in the marketplace and to the extent an applicant believes it is necessary to use technical experts to review the project to ensure the applicant has not overlooked any elements that would affect the technical merit of the project. However, USDA will not award points on the basis of a third-party review.

H. Guaranteed Loans

General

Comment: Several commenters questioned whether the B&I guaranteed loan program was a good model for the 9006 program.

Response: The commenters did not specify why they felt that the B&I program was not a good model. Without specific reasons, USDA cannot further respond other than to say we disagree and have continued to model much of the 9006 Guaranteed Loan program on the B&I program. While there are programmatic and policy differences, the 9006 program is designed to complement, not compete with, the B&I program.

Comment: Two commenters stated that they believe that the Section 9006 Guaranteed Loan program imposes review, application, and reporting burdens on the lender well above those for the B&I program or the Guaranteed Loan programs offered by SBA. The commenters maintained that few lenders would be willing to go through this effort in order to close loans through this program and are more likely to use the B&I program, which does not exclude guarantees for renewable energy systems and still has capacity for additional loan guarantees.

Response: USDA disagrees with the commenters that the requirements associated with the Guaranteed Loan program under the 9006 program are more onerous than those under the B&I program. For the final rule, we reviewed the requirements associated with the guaranteed loan portion of the 9006 program and have included those elements from the B&I program that are the minimum necessary to ensure technically feasible renewable energy projects and energy efficiency improvement projects are funded. We have modified the B&I program requirements only to the extent necessary to make the 9006 program statutorily consistent and to address the requirements associated with the particular technologies to be funded under the 9006 program. As noted in the previous response, the 9006 Guaranteed Loan program is meant to complement, not compete with, the B&I program.

Comment: One commenter recommended that the application process under the 9006 program be more streamlined than the B&I program to make them worthwhile and encouraged USDA to look at patterning the rules on the SBA loan guarantee program. This commenter encouraged the Department to retain the guaranteed loan section in the final rule because such a program might encourage lenders to add renewable energy projects to their portfolios but without the risks and uncertainty of the market that would otherwise discourage their involvement.

Response: We have retained the guaranteed loan program. In addition, the 9006 program has simplified the application process for applications for guaranteed loans of $600,000 or less, by incorporating the use of Form RD 4279–1A and, for those applications for projects with total eligible project costs of $200,000 or less, by allowing the use of a ''reduced'' Technical Report. No other streamlining has been done because any further streamlining would jeopardize USDA's ability to ensure project viability and compliance.

Comment: One commenter suggested that only those exceptions to the B&I program be noted in this section in order to keep the rule short.

Response: USDA agrees with the commenter and has revised this section, and others, to identify which sections of the B&I program are applicable and any and all differences.

Comment: Three commenters stated that many of the application, documentation, loan structure, and loan servicing requirements applicable to the FSA guaranteed loan program could also apply to the renewable energy loan program and continue to protect the Government's interests.

Response: USDA has not adopted this comment. USDA felt that it is more important for the 9006 program to be consistent with other Rural Development programs for ease of administration. This consistency should help borrowers and applicants become familiar with and meet Rural

Development requirements across multiple Rural Development programs.

Comment: Two commenters suggested that the rule allow for a streamlined and simplified process for lenders that have been approved as preferred lenders by the USDA Farm Services Agency (FSA).

Response: USDA has not incorporated this suggestion in the final rule. The types of projects funded under the 9006 program are likely to be significantly different than those under FSA programs. FSA programs address agricultural production, while the 9006 program addresses commercial energy production projects. Lenders approved under the FSA program may not be experienced with the nature and scope of the technologies associated with the projects that would be funded under the 9006 program. Therefore, we have not incorporated the commenters' suggestion.

Comment: Several commenters were concerned about the inclusion of the guaranteed loan program in the Renewable Energy Systems and Energy Efficiency Improvements Program. Two of the commenters were concerned that the inclusion of the loan guarantees will reduce funding available for the grant and direct loan elements of the program. One of these commenters pointed out that the 9006 program is one of the few Federal assistance grant programs (versus guaranteed loans) that provides money to individuals to install renewable energy or energy efficiency systems. Without information on how USDA will distribute the funds (what percentage goes to grants and what percentage goes to guaranteed loans), this commenter stated that his office cannot support the guaranteed loan aspect of the program. The other commenter stated that a loan default could put the grant program at risk and recommended the use of direct loans rather than guaranteed loans.

Another commenter stated they have significant concerns about the proposed loan guarantee program and urged USDA to postpone implementation until higher levels of funding can be appropriated, or else substantially restrict the amount of funding available for loan guarantees compared to grants. This commenter asserted that implementing the loan guarantee program without additional funding may put the successful grant program in jeopardy. Adding the administrative responsibilities of a loan guarantee program to the already demanding grant program in the early years of implementation may prove to be too much for the overstretched USDA staffs, likely requiring resources to be diverted from limited project funds to cover administrative costs. Loans and loan guarantees will not accomplish the program's intended goal of offsetting the high initial capital costs of renewable energy technologies for rural communities as effectively as grants, and we respectfully request that USDA allow another comment period before a loan guarantee program is tested to further examine its efficacy. Section 9006 is the sole direct grant program for renewable energy and energy efficiency installations, but these projects are already eligible for other USDA loan programs such as the B&I loan guarantees.

Response: USDA believes that the guaranteed loan program will complement, not compete with, the grant program by guaranteeing loans made by commercial lenders to agricultural producers and rural small businesses to support renewable energy systems and energy efficiency improvements. Therefore, we are maintaining the guaranteed loan program in the rule.

Comment: One commenter claimed that the guaranteed loan program, as written, provides the lender with too much control of the project. The commenter maintains that the purpose of rural development is lost when the lender, which may be a large financial institution headquartered far from the actual project, is responsible for the oversight of the construction and operation of the system.

Response: The Agency feels the regulations provide sufficient oversight to ensure regulatory compliance and prudent servicing by lenders. Under the 9006 Guaranteed Loan program, lenders must demonstrate they have the capacity and expertise to effectively underwrite, process, and service all loans in a prudent manner. In addition, the lenders are required to provide to the Agency periodic loan status and financial reports on the borrower's operation, including trends, strengths, weaknesses, extraordinary transactions, and other indications of the financial condition of the borrower. Lastly, the Agency will meet with the lender periodically to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the Loan Agreement are being enforced.

Comment: One commenter stated that they believe that a loan guarantee program will not be overwhelmingly successful with regard to energy efficiency projects because of the small funding requests for energy efficiency projects. For this reason, the commenter supports both the grant program and the direct loan program (while also supporting the loan guarantee program for larger, often renewable projects).

Response: While the commenter may be right in terms of the types of funding that will be most likely utilized by the various types of projects, there is no need to change the structure of the 9006 program as proposed. Adjustments can be made in 9006 grant or loan allocations to respond to unexpected demand.

Comment: One commenter recommended that, with the exception of direct, intermediary or nontraditional lender guaranteed loans, USDA should utilize grants rather than loans because the B&I program already allows renewable energy and energy efficiency projects.

Response: As noted in previous responses, the 9006 program is designed to complement the B&I program, and the guaranteed loan program within the 9006 program is one of the funding mechanisms required by the 2002 Farm Bill. For these reasons, USDA is maintaining the guaranteed loan program in the 9006 program.

Comment: One commenter presented summaries of conversations with two lenders experienced with wind energy projects who questioned how effective a loan guarantee program would be. The lenders, in general, indicated that the amount of funding currently available for the loan guarantee program would not warrant all the work and risk of applying for this loan guarantee. The lenders pointed out that banks would do their own due diligence for a loan and projects qualifying for a loan would receive the loan with or without the USDA loan guarantee. One of the lenders indicated that his bank does not collateralize a farmer's land. He said, ''A 50 percent loan guarantee would not bring anything further to the table.'' Lastly, this lender described how his bank's past usage of loan guarantees has been more as ''a last ditch effort'' to keep a farmer around rather than as a new business prospect. In summary, the commenter believes that the loan guarantee program, as presented, does not appear to offer much to the current business models being used for farmer-owned large wind projects in Minnesota. The commenter does acknowledge that this program may have something to offer different kinds of banks or as yet undeveloped business models for farmer-owned renewable energy projects. However, the commenter is concerned about how well this program will be used given this assessment from representatives that are already ''up to speed'' on wind energy.

Response: As noted in previous responses, the guaranteed loan program

within the 9006 program is one of the funding mechanisms required by the 2002 Farm Bill. Therefore, USDA is maintaining the guaranteed loan program in the 9006 program. Also as previously noted, the 9006 program is designed to complement, not compete with, the B&I program. Thus, funds from both programs can be used.

Comment: One commenter stated that they are concerned about the potential cost and returns that a lender would experience under the guaranteed program making it less attractive as proposed. The commenter states that the expenses lenders would incur relative to the application and servicing requirements, especially as it concerns engaging outside technical experts and monitoring construction activities, could be significant when the loan is originated, especially for projects an individual producer could utilize in his/her operation on a small scale. According to the commenter, the regulations and requirements are geared toward large scale, multi-million dollar projects undertaken by alliances of producers. The commenter illustrates his concern by noting that, for a lender with a net interest margin of 3.0 percent, each $100,000 guarantee commitment ($200,000 loan funds) results in $6,000 available to pay for the origination and first year servicing of the loan. The fee, if not passed on to the borrower, would reduce this amount to $5,000 in this scenario. The expenses related to engaging technical experts to review the project requirements and environmental impacts, supervising and monitoring the construction of any facilities, and ongoing reporting to the Agency could greatly exceed the net interest income available to cover these expenses. Lenders with low net interest margins will lose money unless the project is of sufficient size to be profitable for the lender. Such a break-even size may represent too large of a project for moderate-sized producers to develop, and they would not be able to benefit from the program.

This commenter was also concerned that, as written, the guaranteed loan program would discourage lenders from participating. Specifically, the commenter made two recommendations to encourage lender participation. First, the commenter recommended that USDA relax its underwriting requirements in order to encourage lender participation in the program. Due to the limited guarantee percentage for any given project, lenders have a significant exposure in a project and this should provide Rural Development staff with sufficient flexibility to relax its requirements and still protect the government's interest. The preamble states that smaller projects, or projects with a mature technology, will require less information. The apparent threshold for a ''small'' project is less than $100,000 in project costs. The commenter recommended that USDA raise this threshold significantly in order to encourage lenders to utilize the program and be able to benefit small operations.

Second, the commenter recommended that USDA require customary loan analysis and documentation relative to projects under $1,000,000 (a $500,000 guarantee), especially for lenders with FSA preferred lender status, and that loan servicing be prudent and at all times protect the Government's interest in the loan.

The commenter believes that having these two requirements for originating and servicing loans would greatly simplify the regulations that lenders are required to follow for small projects. While this would result in differences between loan guarantee applications and lenders, according to the commenter, the burdensome expenses would be minimized and the returns to lenders from participating in the program could be sufficient to encourage participation.

Response: USDA has not adopted these recommendations because the various requirements in the 9006 program are consistent with other Federal guaranteed loan programs' commercial underwriting and servicing standards. Therefore, we have not revised the final rule with regards to these aspects. On the other hand, as noted previously, small projects (*i.e.*, those with total eligible project costs of $200,000 or less) now have less burden associated with their applications by being able to submit less detailed Technical Reports. In addition, applications for guaranteed loans of $600,000 or less may submit the short application form for guaranteed loans (*i.e.*, Form RD 4279–1a).]

Comment: One commenter stated that little effort had been made to develop a guaranteed loan program tailored to individual farmers and rural small businesses. The commenter stated that the level of documentation required in the proposed rule is too cumbersome for most applicants. The commenter stated that while the B&I program on which the proposed program is modeled is a good program, it is intended for larger businesses, with loan levels often in the tens of millions of dollars. The level of financial screening for these large loan guarantees is excessive if applied to the smaller loans that should be offered under the 9006 program. The commenter also noted that potential lenders have indicated that they are reasonably unlikely to participate in such a cumbersome application approval and lending process. The commenter then pointed to the SBA and the FSA guaranteed loan programs as potential models for the 9006 guaranteed loan program and urged USDA to reconfigure the 9006 guaranteed loan program along these lines. For example, applications could be modeled on SBA's LowDoc program for small guaranteed loans, which are substantially streamlined relative to the proposed 9006 application.

Response: Based on the commenter's concerns, we have adopted a reduced Technical Report for guaranteed loan applications for projects with total eligible project costs of $200,000 or less. We believe that this will facilitate access to the guaranteed loan program for small agricultural producers and small rural businesses.

Term of Loan

Comment: Two commenters recommended increasing the term of the loan. One of the commenters stated that, for some projects, an equipment lending term of 15 years may be low. This commenter requested expanding the term of loan for at least some technologies to 25–30 years. The other commenter stated that ''it is our belief that the USDA would be most helpful to farmers and agricultural producers if it would offer long-term (20 to 30 year), low interest loans for up to 100 percent of the equipment cost of farm-sited thermophilic anaerobic digester based renewable energy systems that produce electrical energy for export to the local power grid or biogas available for heating, cooling, drying or other agricultural processed on the farm.''

Response: USDA agrees with the commenter that the term of loan needs to be lengthened because of the nature of the technologies being funded under the 9006 program and, therefore, has increased for equipment and machinery the maximum term of loan to 20 years. By statute (9006(c)(1)(B)), USDA cannot offer loans in excess of 50 percent of the cost of the activity.

Guarantee/Annual Renewal Fee Percentages

Comment: One commenter noted that, as proposed, the initial guarantee fee is 1 percent and in subsequent years it is 0.5 percent per year. The commenter recommended deleting the use of a guarantee fee in subsequent years because having this fee will discourage any lenders from participating in this program.

Response: USDA has retained these provisions in the final rule. USDA does not have to charge the annual renewal fee. We will identify if the annual renewal fee will be charged when we issue the announcements for each fiscal year.

Lien Priority

Comment: One commenter, referring to the list of collateral and lien priority, stated that perhaps some suggestions could be made as to the appropriate relative lien priority (*e.g.* first, second, parity) between two USDA guaranteed loans—one under this program, the other under the B&I program.

Response: At minimum, the 9006 program must have parity. USDA will not accept a junior lien position under the 9006 program. Section 4280.139(b) has been revised to indicate this.

Eligible Lenders

Nontraditional Lenders

Comment: Commenters recommended allowing non-traditional lenders to participate in the guaranteed loan portion of the program and made suggestions for allowing certain entities to be eligible lenders. Some of the commenters suggested that nontraditional lenders may have more ''expertise'' with the renewable energy industry. Commenters identified energy service companies and rural electric cooperatives as two potential ''nontraditional'' lenders who should be allowed to participate in the 9006 program. One of the commenters recommended allowing non-traditional lenders for loans of up to $250,000. According to this commenter, this will allow some State lending authorities and Catalogue of Domestic Federal Assistance (CDFA) organizations access to the program, and many of these groups are targeting energy efficiency/renewable projects.

Response: USDA agrees with the commenters that nontraditional lenders should be allowed. Therefore, USDA has revised the regulation to allow lenders as they are allowed under the Agency's B&I program, except for mortgage companies that are part of a holding company.

Comment: One commenter noted that the USDA should allow intermediaries and recommended that USDA consider a loan program like the Intermediary Relending Loan Program for States who use their renewable energy or energy efficiency funds to make USDA guaranteed loans.

Response: The Agency has no statutory authority to implement an intermediary relending program (revolved loan funds) under this program.

Lender's Functions and Responsibilities

Environmental Information

Comment: One commenter felt that this section put too much responsibility on the lender for the environmental compliance and notification for the project. The commenter recommended changing the responsible party to the applicant (borrower). If the lender must be responsible for alerting the Agency about environmental problems with the project, the commenter contends that lenders will likely not want to be involved with the loan guarantee program. According to the commenter, most lenders, for example, would balk at the idea of being responsible for a large wind turbine harming an endangered species.

Response: USDA does not agree with this comment. The 9006 program is using the same procedures as specified in the B&I program. USDA believes that this responsibility is appropriately placed with the lender and has not revised it in the final rule.

Construction, Planning, and Performing Development

Comment: One commenter believes that proposed § 4280.131(d), which requires that all projects are designed according to accepted practices, needs clarification on what the intent is. The commenter maintains that this should be the responsibility of the engineer or project designer and not the lender.

Response: The 9006 program is simply requiring the same level of performance from a lender as is currently being required under the B&I program. USDA sees no reason to change that level of performance.

Comment: One commenter felt that the following requirement put too much responsibility on the lender: ''The lender must monitor the progress and construction and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, state and local code requirements. * * *'' The commenter recommended amending the language such that the applicant would provide project oversight and provide the information for the lenders' records.

Response: Under the guaranteed lending portion of the 9006 program, USDA must rely on the lender to make prudent lending decisions and monitor the progress of the project. The lenders' proximity to the project, its interest in the collateral aspect of the project, and its knowledge of the interested parties are invaluable in ensuring appropriate oversight of progress. Additionally, as with the B&I program, the 9006 program requires the lender to ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart. USDA believes that this responsibility is appropriately placed with the lender and has not revised it in the final rule.

Replacement of Document

Comment: One commenter noted that, under the proposed § 4280.138, USDA may issue a replacement Loan Note Guarantee or Assignment Guarantee Agreement that was ''lost, stolen, destroyed, mutilated or defaced.'' Along with a certificate of loss, the party seeking the replacement document must provide an indemnity bond that holds the USDA harmless from damage or loss incurred by reason of replacing the document. The bond must be in an amount not less than the unpaid principal and interest. The bond must be underwritten by a qualified surety company listed in Treasury Department Circular 570 only when the principal balance and interest due on the note is $1 million or more. Therefore, bonds with amounts of less than $1 million may be provided by other than a corporate surety.

The commenter encouraged USDA to reconsider this approach. Corporate sureties, with extensive financial resources supporting them, provide USDA the best assurance that the financial obligations under the bond will be fulfilled. At a threshold of $1 million, USDA is exposed to the risk that noncorporate sureties, such as an individual surety, will have insufficient resources to protect the government from significant loss. Because of the financial reporting requirements established by the Treasury Department for corporate sureties, the government knows that the surety has the financial ability to perform. There are no such reporting requirements for individual sureties. In light of the increased risk, we recommend that the proposed regulation should be revised to require that all indemnity bonds provided under § 4280.138 must be provided by a surety company listed on the Treasury Department Circular 570.

If USDA were to maintain the current $1 million threshold for the corporate surety requirement, we recommend that it adopt requirements similar to those in the Federal Acquisition Regulations (FAR) regarding acceptable types of alternate security. The FAR sets forth the acceptable types of security that may be posted by individual sureties (see FAR § 28–203–2). These include:

• Cash, or certificates of deposit, or other cash equivalents with a federally insured financial institution;
• United States Government securities at market value;
• Stocks and bonds actively traded on a national U.S. security;
• Real property owned in fee simple by the surety and located within the United States or its outlying areas; and
• Irrevocable letters of credit (ILC) issued by a federally insured financial institution.

Thus, USDA is assured that quality assets are supporting the guarantee.

Response: USDA agrees that it is essential to protect the interests of the taxpayer. The practice of issuing replacement documentation under specified circumstances is consistent with other Agency lending programs, and broadens the scope by including ''defacement'' and ''mutilation'' as circumstances necessitating replacement.

Indemnity bond requirements are also consistent with other Agency lending programs. We believe the 9006 program is not sufficiently different to warrant a different approach. USDA requires corporate bonding for larger projects without excluding noncorporate sureties from smaller projects, providing the broadest range of opportunity for the greatest number of potential sureties.

Credit Quality

Comment: One commenter asked how cash equity is defined. The commenter is not concerned with the source of the asset, but with the nature of how it's booked on the balance sheet. The commenter would prefer the phrase ''tangible balance sheet equity.''

Response: Cash equity must be in the form of cash and should be on deposit in a federally insured depository account. Cash differs from ''tangible balance sheet equity'' in that cash only includes liquid funds. Tangible balance sheet equity may include other items of value that are not cash. The final rule has not been revised.

Appraisals

Comment: One commenter requested clarification on what appraisals USDA would require because the commenter believes the rule does not clearly define what is to be appraised. The commenter suggested that, if the applicant is a rural small business (*i.e.*, an LLC), newly formed for this project, the appraisal would be limited to the equipment they wish to purchase. To illustrate, the commenter stated that in a case where only a generator and associated equipment need to be appraised, a simple formula might be useful. The formula could determine the value of equipment that could be reused later to be worth 70 percent of the equipment new.

Response: Under the 9006 program, appraisals for loans greater than $600,000 are to be conducted in the same manner as for loans under the B&I program. For loans of $600,000 or less, self-appraisals may be used. In neither case are we addressing the appraisal process itself. This provides the borrower/grantee with the greatest level of flexibility in determining that level of investment it will request of the Government. A specific formula, or series thereof, is not included in the Regulation. However, guidance will be provided in support training documentation that is outside the regulatory process. Therefore, we have not revised the rule with regards to the manner in which appraisals are to be conducted.

Personal and Corporate Guarantees

Comment: Several commenters recommended removing the provisions for unconditional personal and corporate guarantees because of the potential to discourage investors and applicants. For example, one of the commenters noted that many applicants do not want to have to put themselves or their farm up for collateral for their loan because the farmer does not want to lose the farm if the project defaults on the loan. Another commenter noted that investors in wind projects were willing to invest money in such projects due to the production tax credits available and the accelerated depreciation benefits. Such investors would have no say in management or the operation of the company. But such investors are not willing to guarantee the transaction—their desire to be involved with the project is driven by tax benefit reasons only. Finally, another commenter recommended that a personal guarantee should not be required for those non-local investors who are only buying tax credits and recommended an exception to the requirement for a personal guarantee for non-local financial owners of renewable energy projects, such as wind turbines.

Response: While USDA is sensitive to those who are concerned about their personal liability and, for instance, using their farms as collateral, nevertheless it is customary credit practice to require the borrower to pledge personal and corporate guarantees sufficient to protect the lender's and the Agency's interest. The situations noted by the commenters involve ''passive'' investors; that is, those who only invest in a project without any active participation in the management or operation decisions. USDA agrees that to further promote renewable energy projects, the rule should not discourage such investors. Therefore, we have revised the rule to exclude passive investors from the requirement to provide personal or corporate guarantees. However, to the extent that investors and applicants have solely a nonpassive, beneficial interest in the project, USDA believes it is necessary to protect the public fisc to continue requiring unconditional personal and corporate guarantees.

Requirements After Project Construction

Comment: Two commenters remarked on the reporting requirement for energy efficiency improvement projects after project construction. One of the commenters encouraged USDA to structure post-project reporting requirements to collect data that will enhance industry understanding of energy efficiency performance impacts. The other commenter stated that the requirement to report the actual amount of energy produced by the renewable energy system would be onerous for smaller projects that lack metering. This commenter recommended exempting smaller projects from this requirement and allowing qualitative system performance reporting.

Response: The energy audit or assessment required for energy efficiency improvement projects will provide most of the information identified by the first commenter, including an estimate of energy savings. While difficult, USDA believes it is necessary to keep this reporting requirement for energy efficiency improvement projects, in part to help evaluate the program's success.

Exception Authority

Comment: One commenter requested that, at a minimum, a lender with an FSA preferred lender status be granted additional preference and discretion under proposed § 4280.104 with respect to loan guarantee applications and servicing. The commenter stated that this could also be allowed under Section 9006(c)(2)(G) of the 2002 Farm Bill where the Secretary shall take into consideration ''other factors as appropriate'' relative to application requirements. According to the commenter, this would provide some separation between the loan and grant programs since the grant program is a direct relationship with a producer and the loan guarantee program is a direct relationship with a lender. In addition, the commenter believes that this approach would help to ''ensure that

loan programs are based on sound financial principles'' as stated in the preamble relative to one of the main components for developing the proposed regulations.

Response: USDA disagrees with the commenter's request. USDA believes that all lenders must be treated equally and, therefore, has not revised the rule as requested.

I. Direct Loans

Need for Program

Comment: A number of commenters objected, for a number of reasons, to USDA not offering a direct loan program and urged USDA to institutionalize a loan program as part of the final rule for Section 9006.

Commenters, for example, pointed out that the statute authorizing the 9006 program calls for a direct loan program, that USDA has the in-house capability for underwriting and servicing direct loans, that a direct loan program would help leverage the available funds, and that USDA in conjunction with the DOE has expertise and ability to evaluate the financial and technical feasibility of these projects.

Two of the commenters further suggested that a direct loan program would be easier to manage than a guaranteed loan program. One commenter suggested that it would also be less costly to manage.

One of the commenters stated that if USDA is unable to issue a final rule that includes the direct loan program for FY 2005, it should include a supplemental rulemaking for the direct loan program later in 2005.

Response: USDA is still evaluating the resources necessary for implementing a direct loan program. Assuming a positive evaluation, USDA would expect to issue a rule proposing a direct loan program to complement the grant and guaranteed loan program. In this final rule, USDA has not modified the direct loan process that was in the proposed rule.

Comment: One commenter stated that they agree with the Agency's decision to not promulgate a regulation for the direct loan program under Section 9006 at this time. This will allow for consideration of changes in both program demand and technical innovation over time while not unduly restricting the Agency's options in the short run.

Response: As noted in the previous response, USDA is still evaluating the resources necessary for implementing a direct loan program. USDA will also take into consideration the experience it gains in implementing the grant and guaranteed loan program in developing any direct loan program.

J. Laws That Contain Other Compliance Requirements

Environmental

Comment: Many commenters recommended that USDA either eliminate the requirement for an environmental impact assessment or significantly reduce the requirement for environmental assessments. One of the commenters stated that because small projects by definition have a very limited impact on the local environment and local government siting and permitting processes are sufficient to ensure environmental protection. Another of the commenters recommended removing specific environmental requirements from the rule and instead issuing requirements annually.

Response: Projects funded under the 9006 program must comply with all environmental requirements, including Federal, State, and local requirements. All applicants must comply with the environmental requirements applicable to their project. Funding a grant or loan or providing a loan guarantee is a Federal action requiring compliance with the National Environmental Policy Act (NEPA). While small projects are likely to have fewer adverse environmental impacts than similar larger projects, USDA cannot predetermine that all small projects will have very limited impacts. USDA believes it is appropriate for environmental evaluations prepared for projects to analyze the nature and extent of a project's environmental impact. For these reasons, USDA is not able to accommodate the commenter's request.

Comment: One commenter stated that the language ''identify all environmental issues'' in the technical reports is not specific. The commenter suggested that USDA make references to central environmental review requirements for all types of energy systems such as proposed § 4280.114(d) and/or reference 7 CFR part 1940, subpart G, of this title. Describe requirements for Class I or Class II environmental reviews.

Response: As revised, the Technical Report requirements address the need to identify environmental issues through Form RD 1940–20. However, we have not made reference to other requirements (*e.g.*, Class I or II environmental reviews) because such requirements will be specific to individual projects and cannot be addressed fully through specific language in the rule. USDA advises all applicants to consult experts in the development of their proposed project's technology to identify all environmental issues that are associated with the applicant's proposed project so that the Agency can make its environmental evaluation.

Comment: Two commenters were concerned that these requirements placed an undue burden on the applicant. One of the commenters stated that conducting an environmental impact assessment and initiating consultation with other State agencies placed an undue burden on the applicant. This commenter, therefore, recommended assigning the responsibility for conducting the environmental assessment and informal consultation with other agencies to the USDA State Offices. The other commenter noted that applicants are asked to initiate the environmental review process with such contacts as their State historical preservation agencies on their own and, according to the commenter, without having project funding in place, this shifts a substantial burden to the applicants.

Response: Ultimately, the responsibility for environmental evaluations rests on the Agency. Some applicants make arrangements to assist the Agency with supporting documentation to speed the process. USDA appreciates that this effort can be significant. Because such efforts can be costly, USDA has included environmental assessment as an eligible project cost (as part of professional services). USDA cannot provide funds to applicants prior to a project being evaluated and selected for an award.

Comment: One commenter stated that Rural Development Program Support Staff have issued guidance that predetermines the level of environmental review based on technology type, and that this ''one-size-fits-all'' pre-classification places undue burdens on specific projects. Instead, the commenter recommended that USDA draft a programmatic environmental assessment and use that to develop pre-classifications.

Another commenter stated that the environmental review process should be simplified. According to the commenter, many of the approved project activities, especially with energy efficiency projects, could be categorically excluded from environmental review.

Response: Although not a part of this rule, USDA has identified classes of action and established a minimum level of environmental review for each category of action. For example, energy efficiency projects are classified as categorical exclusions.

Comment: Several commenters felt that the environmental assessment has been a particularly confusing area for applicants, who are often unsure of the level of environmental review required and underestimate the effort needed to complete the assessment. The commenters, therefore, recommended that USDA place extensive, complete, and clear information either in the final rule or on its Web site so that applicants have a better understanding of what is required based on the type and scope of their project. One of the commenters recommended that, rather than referring applicants to Form RD 1940–20 or regulations, USDA place extensive information either in the final rule or on its Web site explaining the requirements.

Another commenter recommended that USDA provide a more clear explanation of what is needed for the National Environmental Policy Act approval including example completed checklists for various project configurations, and should not require the applicant to initiate consultation with State agencies and prepare a full environmental impact analysis, unless a USDA review determines these steps are necessary.

Response: USDA agrees with the commenters that the requirement for environmental information can be confusing because it involves numerous laws, regulations, and Executive Orders. The majority of these requirements exist in 7 CFR part 1901, subpart F, 7 CFR part 1940, subpart G, and 7 CFR part 3015, subpart V, and associated Administrative Notices and Procedural Notices. USDA strongly advises all potential applicants to seek assistance in this area when preparing their applications.

USDA continues to refer to Form RD 1940–20 in the final rule because that is the tool the Agency uses to collect the necessary environmental information. USDA cannot in this rulemaking set forth conditions to cover every potential circumstance under which full environmental reviews and analyses are or are not required. Further, it is not the intent of this program to usurp the requirements for such assessments.

Comment: One commenter stated that somewhere in the rule, USDA should allow for operational policies to be implemented and updated without revisiting the rule. The commenter referred to the National Environmental Policy Act (NEPA) requirements for projects as an area that might be covered outside the rule. EPA allows categorical exclusions from NEPA requirements. USDA does not at this time have a complete list of technologies and energy efficiency improvements that will fit under a categorical exclusion, but many probably will. By authorizing in the rule the development of such a list as a legitimate Agency policy responsibility, USDA can remove a significant disincentive to applicants. The commenter claimed that farmers are accustomed to going into their county USDA offices, whether Natural Resources Conservation Service, Farm Service Agency or Rural Development, and having the county office staff be able to refer to their respective standards and specifications manuals and transparently provide service and approval in a relatively short amount of time. Such reference materials do not yet exist for the Renewable Energy Systems and Energy Efficiency Improvements Program. At this time, the program implementation process is transferring this technical requirement to the farmer/rancher/rural small business. The commenter urged USDA not to create a rule that precludes development of field office technical guides that will be able to reduce the paperwork load on future program participants.

Response: While not a formal comment on the rule, USDA responds by stating it evaluated the proposed rule to identify which, if any, portions could be implemented other than as a rule, in order to facilitate updating. As noted previously, USDA intends to develop implementation tools and training materials for the State Offices to facilitate the implementation of the 9006 program.

However, as noted earlier, there are some aspects to the 9006 program which USDA cannot change. For example, projects are required to comply with NEPA and other regulations, which are outside of the scope of the 9006 program. USDA has provided for the development of various forms of environmental reviews, which will serve as documentation of environmental compliance.

Civil Rights Compliance

Comment: One commenter asked when the compliance reviews required under Civil Rights (Title VI) compliance stop. The commenter points out that the proposed regulation states ''Initial reviews will be conducted after Form RD 400–4 is signed and all subsequent reviews every 3 years after.'' The commenter then notes that the grant agreement states that a compliance review will be done initially and the final will be done 3 years from the date of loan closing or when final disbursement of grant funds has occurred.

Response: We agree with the commenter that the rule needs to identify when compliance reviews stop. We have revised the rule language based on the language in the grant agreement.

Comment: One commenter asked whether energy grants are subject to Title VI.

Response: Energy grants are subject to Title VI, which was indicated in the proposed rule, and the final rule retains the language.

Insurance Requirements

Comment: One commenter stated that the insurance required may preclude those seeking smaller awards from applying, as these premiums may ultimately be more than the grant award. The commenter points out that the proposed provisions allow for this requirement to be modified or waived by USDA. The commenter, however, believes that these provisions would be clearer if the regulation indicated those situations to which those waivers or modifications applied.

Response: While USDA agrees with the commenter that insurance requirements may be an obstacle to those seeking smaller awards, these requirements are necessary to ensure the stability of the 9006 program and to protect the Agency's interest and the public funding being made available under this program. USDA believes that, given the variety of circumstances that could present themselves, applying the waiver on a case-by-case basis will be more equitable that establishing rigid parameters for the use of waivers.

Comment: One commenter stated that they have a strong objection from a member of the public to the insurance requirement of business interruption insurance.

Response: USDA believes that business interruption insurance is necessary for most projects, and is a requirement consistent with other Federal grant and loan programs (*e.g.*, the B&I program). USDA also believes, however, that for smaller projects ($200,000 or less in total eligible project costs), the cost of business interruption insurance outweighs the benefit so it is not necessary. Therefore, USDA has retained the requirement of business interruption insurance for all projects with total eligible project costs greater than $200,000 and has exempted this requirement for all projects with total eligible project costs of $200,000 or less.

K. Construction Funding and Management

Comment: One commenter stated that the proposed rule disallows applicants from any involvement in construction of

the system (in § 4280.109(a)(2)—second sentence and in 4280.115(b)). The commenter recommended that the program be modified to allow applicant construction, if ''the project has a third-party contractor with principal responsibility for the design, installation and construction of the system and where the applicant's ability to perform the task is validated by the technical review team.''

A second commenter recommended that, provided applicants are working under the supervision of a qualified installer, construction services provided by the project owner be allowed, particularly trenching, foundation digging and pouring, and other site preparation activities with which many farmers are familiar.

Response: Under the final rule, an applicant is allowed to serve as the prime contractor for projects built under the simplified application process, which uses the reimbursement method, provided a qualified consultant certifies the work performed. USDA notes that any work performed by the applicant does not qualify as an in-kind contribution and will lead to a reduction in eligible project costs for that project.

Comment: A number of commenters questioned the use of 7 CFR part 1924 for the 9006 program, pointing out that 7 CFR part 1924 was developed for residential construction and, thus, was not appropriate for the 9006 program. Other comments were made concerning how the proposed rule for the 9006 program intended to incorporate 7 CFR part 1924. The commenter pointed out that 7 CFR part 1924 is designed for multi-family housing projects in which the Agency is the primary lender. One of the commenters recommended reducing procurement requirements to only what is required in 7 CFR parts 3015, 3016, and 3019.

Response: USDA agrees with the commenters that 7 CFR part 1924 is not the best standard to use, and has replaced 7 CFR part 1924 with 7 CFR part 1780, while equipment procurement must be made in compliance with 7 CFR part 3015.

Comment: One commenter stated that the procurement regulations are excessive for an Agency participation of 25 to 50 percent in any given project.

Response: As stewards of Federal funds, the Agency must determine that program funds are used prudently. To meet this goal, all Federal supported procurement must meet open and free competition procurement standards. The final rule outlines project development and procurement requirements based on the nature, scope, and complexity of the project to allow the appropriate standards to be applied.

Comment: One commenter raised numerous issues on how the proposed rule would implement 7 CFR part 1924. The commenter states that 7 CFR part 1924, subpart A fails to address procedures and requirements for the design/build method, the most common form of proposed procurement being requested in the renewable energy and energy efficiency projects. The commenter stated that procedures need to be developed to address this situation and pointed out that RUS currently has a draft regulation to cover this issue. The commenter, therefore, recommended that the modified draft RUS requirements be incorporated into 7 CFR 1924, subpart A, under proposed § 4280.115 along with utilizing the Engineering Joint Contract Documents Committee (EJCDC) design-build document set with the addition of the Federal Requirements section of EJCDC, Funding Agency Edition, General Conditions C–710.

The commenter stated that proposed § 4280.115(a)(5) should not delete the applicability of 1924.5.(d)(4)(iv) to this rule. The commenter noted that effective January 10, 1997, FSA, RHS, RBS, and RUS amended their regulations regarding construction and other development for farm, housing, community, and business programs to comply with the National Earthquake Hazard Reduction Program's (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings. According to the commenter, a PN was issued January 10, 1997, which amended the following sections of the regulations: 1924–A, 1942–A, 1948–C, and 1980–A. These regulations require that all new building construction shall be designed and constructed in accordance with earthquake (seismic) provisions of the codes listed in the appropriate regulations.

The commenter stated that proposed § 4280.115(a)(5) should not delete the applicability of § 1924.5(d)(4)(i) through (iv). According to the commenter, 7 CFR part 1924, subpart A requires the ''Acknowledgment of compliance with the applicable seismic safety requirements for new construction will be contained in the certification of final plans and specification on the appropriate Agency form.'' The commenter further states that these requirements must remain to be in compliance with building safety provisions of the Earthquake Hazards Reduction Act of 1977, (42 U.S.C. 7701 *et seq.*) as implemented pursuant to Executive Order 12699.

The commenter stated that the deletion of the applicability of § 1924.13(e)(1) appears to be in error. According to the commenter, § 1924.13(e)(1) is for complex contracts requiring performance and payment bonds. By deleting this section, the commenter points out, the only complex contracting method that remains is § 1924.13(e)(2), which the commenter claims would be in violation of proposed § 4280.115(b) which states: ''Recipients of grants under this subpart are not authorized to construct the facility, project, or improvement in total, or in part, or utilize their own personnel and/or equipment.'' Therefore the commenter recommended that, while § 1924.13(e)(2) should not apply and § 1924.13(e)(1) should remain and that, based on the types of projects being proposed, the EJCDC Funding Agency 2002 Edition (as outlined in RUS Bulletin 1780–26) needs to be added as an alternative option to the American Institute of Architects (AIA) documents.

Response: As noted in the previous response, the revised rule no longer references 7 CFR part 1924. Thus, the issues and concerns raised by this commenter are moot.

Comment: Two commenters expressed concern over the requirement to use AIA documents.

According to one of the commenters, 7 CFR part 1924, subpart A, requires the use of AIA documents, which are very seldom if ever used in industrial construction. In addition, these documents are all copyrighted and require originals to be purchased either in minimum orders or bulk use licenses which must be renewed every year by the designers. This commenter noted that USDA's Rural Development RUS has done extensive work and development with EJCDC to develop a funding Agency Edition of selected standard documents. These documents, according to the commenter, were developed to provide information and guidance to applicants and professional consultants in developing engineering agreements and construction contracts that are legally sufficient, ensure appropriate services are provided for a reasonable fee, and expedite the achievement of the applicant's goals. These documents are used for the construction of Wastewater Treatment Plants, Water Treatment Plants, and related site utilities, including water and sewer transmission lines and electric power lines. In all reality these documents, according to the commenter, should replace the references to the AIA documents in 7

CFR part 1924, subpart A but, at the least, the EJCDC Funding Agency 2002 Edition as outlined in RUS Bulletin 1780–26 need to be added as an alternative option to the AIA documents. The commenter, therefore, suggested that these requirements be incorporated under proposed § 4280.115.

The other commenter stated that it does not seem appropriate to use AIA documents for this program because there are few items in the energy program that would utilize the services of an architect. According to the commenter, the National Office is encouraging the use of EJCDC documents for other programs for engineering and construction contracts. The engineers have purchased these, and it does not make sense to make them also purchase the AIA documents. In addition, the use of EJCDC documents allows the engineer to pay a subscription fee to use the documents, not a fee for every project that the documents are used for. The AIA documents require a fee for each project that the documents are used for.

Response: As noted in the previous responses in this section, the final rule has been revised considerably regarding the basis for construction planning and performing development. The final rule retains reference to the use of selected AIA forms, but also allows other contract documents as provided in the final rule.

Comment: Three commenters recommended that performance bonds should not be required for projects below 100 kW.

Response: USDA agrees that performance bonds should not be required for smaller projects. As such, surety (performance) bonds are not required in the final rule for projects with total eligible costs of $200,000 or less. If total eligible project costs are greater than $200,000, performance bonds are required regardless of the capacity of the project.

L. Miscellaneous

Comment: One commenter noted that Section 9006 of the Farm Bill was intended to benefit independent family farms and ranches and their rural communities, to increase energy security and to promote a healthy environment for years to come. The commenter stated that USDA should change the proposed rules to better reflect these benefits. The commenter pointed out that sustainable agriculture and community development is very important to Missouri Farmers Union and stated that any incentives in this section should help family farmers and ranchers conserve fuel, fertilizer, and other resources. The commenter also stated that incentive projects should be farmer and community controlled.

Response: USDA believes the 9006 program, as proposed, met the goals set out for it in the authorizing statute. Under the final rule, we have further increased meeting these goals by modifying the scoring criteria to award more points than at proposal to smaller agricultural producers and to include points for very small businesses.

With regard to ''incentive'' projects, USDA believes that the commenter is referring to demonstration projects. The 9006 program is not authorized to fund such types of projects, whether they are farmer controlled or community controlled. Furthermore, the 9006 program is available, by statute, only to agricultural producers and rural small businesses. Community-controlled projects would be ''publicly owned'' projects and such projects are not eligible for funds under the 9006 program.

Timing of the Program

Comment: Many commenters expressed concern over the lack of amount of time available to apply for funds and the timing of when the applications were due, often recommending a year-round application process or a late spring period. A sixth commenter also suggested extending the duration of the application period.

Several other commenters stated that applicants have a very narrow time window after receiving a provisional award to complete all outstanding environmental and historical preservation reviews. Two of these commenters expressed concern over the ''relatively short'' period of time allowed to complete a full environmental assessment once the project is selected to receive financial assistance. According to one of the commenters, it has proven difficult for successful applicants to accomplish the public input process and other required reviews before the end of USDA's fiscal year. This commenter felt that moving the program release date to the fall would help alleviate timing issues associated with this review process. One of the commenters felt that USDA did not make the requirements available early enough in the process.

Response: The 9006 program in itself does not have deadlines associated with the filing of applications. Application deadlines and timeframes are identified in the announcements that USDA issues. It is USDA's intent to issue future announcements earlier in the fiscal year to allow applicants greater opportunity to prepare their applications and to provide longer timeframes for application submittal.

Comment: One commenter stated that the time period for completing the environmental assessment is very short and could result in otherwise eligible projects being denied funding. The commenter recommended adopting one of the following possible solutions:

- Define the disbursement of funds as a major (irreversible) Federal Action, rather than obligation, allowing funds to be obligated prior to environmental assessment determination, while putting a maximum time limit before funds were de-obligated.
- Decouple extra-agency determinations and public hearing and comment periods with obligation required by September 30 (the end of the Federal fiscal year).
- Make 9006 program funds no year money.

Response: USDA is not able to implement any of the commenter's suggestions because we do not have the authority to implement them. USDA cannot make the funds appropriated for the 9006 program ''no year money;'' only Congress can do that. In addition, we cannot override the requirements associated with the National Environmental Protection Act. On the other hand, as noted in the previous response, USDA plans to issue its announcements for the 9006 program in a more timely manner to provide applicants more opportunity to prepare and submit their applications.

Program Implementation, Awareness, and Tools

Comment: Several commenters recommended that USDA implement tools to provide instruction to State and local offices to ensure consistent implementation of the 9006 program and to conduct outreach to offices and applicants concerning this program and other similar programs. For example, one commenter stated that to the extent possible, USDA should develop guidance documents for preparing information for small wind, solar, biomass, and geothermal projects.

Response: While this is not a formal comment on the proposed rule, USDA responds by agreeing with the commenters and is developing implementation tools and programs to ensure consistency in the implementation of the 9006 program and to conduct outreach to offices and applicants.

Other

Comment: One commenter stated that USDA should focus all of its financial

resources on diffuse, large-scale, regional, on-farm, integrated windsheds. Within a windshed, individual wind turbines and complementary biomass energy systems must be large enough that they can contribute significant electricity to the regional/national grid but small enough so that they do not require the development of a dedicated electricity transmission infrastructure.

The commenter supported the recommendation by stating that, in general, loan guarantees are preferred because loan guarantees maximize the creation of production capacity. However, the loan guarantee conditions (percentage of loan and percentage of guarantee) may need to be modified initially during the first year or two until there is an established pattern which can be used by lenders for loan evaluation.

Response: The model presented by the commenter is an acceptable business model. However, the statute authorizing the 9006 program is to be applied to more than just wind energy technologies. USDA does not have authority to change the loan limits provided in the statute. Therefore, USDA has rejected the commenter's suggestion.

Comment: Several commenters stated that currently very few potential beneficiaries have been able to secure funding for solar or small wind turbine projects. The USDA has also noted the very limited number of small renewable energy projects. The commenters believe that to provide maximum economic benefit to rural America, the program should aim for a better balance of small and large projects and that achieving this objective will require a radical departure from the current NOFA procurement structure.

One commenter recommended that USDA streamline the administrative compliance requirements for projects less than 200 kW in size. This commenter also stated that they know there were many other potential project applicants who were intimidated by the application process and did not apply for funds even though their sites were well suited for wind energy production from a technical, regulatory, and resource perspective.

Points raised concerning the NOFA process by these commenters were:

- Complex proposal requirements, cumbersome length and redundancy, and preparation time burden discouraged numerous potential small project applicants from applying;
- An application and approval schedule that lacked the flexibility needed to coordinate with the State rebate programs and grant opportunities also needed to make the projects economically attractive (*i.e.*, some farmers did not want to apply for 9006 funds until they were assured of also receiving additional subsidies, but they would not get that answer until after the 9006 submission deadline). For most small scale renewable energy projects the USDA grants are necessary, but not sufficient;
- Scoring that favored shorter payback period projects;
- Scoring that favored applications in which 9006 funds were a smaller percentage of total project cost;
- Scoring that favored ''managed'' systems over owner-operated systems;
- Scoring that favored projects using renewable energy and energy efficiency to help with environmental compliance, including pre-existing compliance issues;
- Scoring that favored energy sales over higher value on-site consumption;
- Requiring an interconnect agreement (or PPA) in advance of project implementation, when most net metered projects do not require such agreements. Two of the commenters noted that some State program managers require an interconnect agreement (or PPA) in advance of project implementation, when most net metered projects do not require such agreements;
- Allowing used or rebuilt equipment. One commenter suggested that used equipment be allowed with no standards for remanufacturing. One of the commenters pointed out that there were no guidelines concerning the use of remanufactured equipment; and
- Limiting in-kind match allowance. One of the commenters also noted that the program did not allow the value of construction work performed by project owners to count as match.

The combined effects of these problems discourage participation in a program that should have much higher participation from small renewable energy systems. For 2004, there were just 13 awards to small wind and solar projects with combined funding of $590,226 or 2.6 percent of total funds awarded.

Response: All of the points raised by these commenters as shortcomings of the NOFA process and to the extent they were carried over into the proposed 9006 program have been addressed earlier in this document.

Most of the commenter's concerns, which for the most part we agree with, have been addressed in a ''favorable'' fashion. A simplified application process is now available, the scoring criteria have been adjusted to address the concerns raised by the commenters, interconnection agreements have been addressed, streamlining (although based on project size) has been addressed and the rule specifically addresses used, remanufactured, and rebuilt equipment. The final rule, however, does not differ with regard to in-kind contributions. In addition, USDA plans to publish its announcements for grants and loan applications in a more timely fashion.

In summary, the 9006 program has been revised from the proposed rule and contains differences from the NOFA procurement procedures that we believe will encourage applications for small projects, including solar and wind, by awarding points for such projects. We believe the revised scoring criteria bring about a better balance among projects of all sizes.

Comment: One commenter, commenting on proposed § 4280.111(d)(3)(ix)(D), suggested that the use of the word unanticipated in the third line is a non sequitur. The purpose of the risk plan is to anticipate potential major component failure. The commenter suggested substituting ''unanticipated'' with ''potential.''

Response: USDA agrees with the commenter and has revised the rule, here and elsewhere, accordingly.

Comment: One commenter, commenting on proposed § 4280.111(d)(5)(i)(C), suggested striking the term ''bodies.''

Response: USDA agrees with the commenter and has revised the rule, here and elsewhere, accordingly.

V. Regulatory Information

A. Paperwork Reduction Act

The information collection and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and were assigned OMB control number 0570–0050 in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB number. The revisions in this rulemaking for part 4280 required an amendment to the burden package and this modification has been approved by OMB.

B. Intergovernmental Review

The Rural Development Grant, Guaranteed Loan, and Direct Loan Program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. Rural Development will conduct intergovernmental consultation in the

manner delineated in RD Instruction 1940–J, ''Intergovernmental Review of Department of Agriculture Programs and Activities,'' in 7 CFR part 3015, subpart V.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 governments. The major purpose of the RFA is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated, without compromising the objectives of the Act.

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–602), the undersigned has determined and certified by signature of this document that this final rule would not have a significant economic impact on a substantial number of small entities. This action impacts those who choose to participate in the grant, guaranteed loan, and direct loan program and requires only minimum information/paperwork to evaluate an application. Therefore, a regulatory flexibility analysis was not performed.

Although a regulatory flexibility analysis was not performed, the Agency conducted a cost-benefit analysis and an initial regulatory flexibility analysis (IRFA) that examines the impact on small entities. The cost-benefit analysis and the IRFA (referred to as the Unified Analysis) are available for review in the docket and the results are summarized below.

The program targets rural small businesses and agricultural producers. The vast majority of these agricultural producers also qualify as small businesses. Based on data compiled by the USDA Economic Research Service and the SBA, approximately 3 million entities would qualify under this program.

The cost-benefit analysis reflects a large net beneficial impact. The expenditure of slightly less than $100 million in nominal USDA funds over 5 years (approximately $23 million per year for FY 2003 through FY 2005 and approximately $11 million per year for FY 2006 and FY 2007) from FY 2003 through FY 2007 represents a present value cost in constant year 2000 dollars of approximately $69 million. This sum in turn supports total program funding (USDA funds and private funds) of over $1 billion. The cumulative cashflow benefits through 2007 are $261 million in comparison to the $69 million cost. The cashflow benefits based upon life-cycle analysis are $1.4 billion, again based upon this $69 million cost.

Given that almost the entire program is directed at small businesses, the burden analysis is a representative measure for small businesses of the reporting, recordkeeping, and other compliance costs. The burden analysis estimated an annual (3-year average) cost of $1.8 million for an estimated 469 applicants per year.

As noted above, the rule is directed almost entirely at small businesses. Therefore, the cost-benefit analysis represents the results as it affects small businesses.

D. Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this final rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule, unless those regulations specifically allow bringing suit at an earlier time.

E. National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1940, subpart G. Rural Development has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

F. 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, Rural Development 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, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires Rural Development to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

G. Executive Order 13132, Federalism

It has been determined under Executive Order 13132, Federalism, that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. The provisions contained in this final rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

H. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, this final rule has been determined to be ''significant'' and, therefore, has been reviewed by the OMB. The Order defines ''significant'' regulatory action as one that is likely to result in a rule that may:

(1) 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 in State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

List of Subjects in 7 CFR Part 4280

Business and industry, Economic development, Energy, Direct loan programs, Grant programs, Guaranteed loan programs, Renewable energy systems, Energy efficiency improvements, Rural areas.

■ For the reasons stated in the preamble, chapter XLII, title 7, of the Code of Federal Regulations is amended as follows:

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

■ 1. Part 4280 is added to read as follows:

PART 4280—LOANS AND GRANTS

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Subpart B—Renewable Energy Systems and Energy Efficiency Improvements Program

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4280.200 OMB control number.
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Appendix B to Part 4280—Technical Reports for Projects with Total Eligible Project Costs of Greater than $200,000

Subpart A—[Reserved]

Subpart B—Renewable Energy Systems and Energy Efficiency Improvements Program

§ 4280.101 Purpose.

(a) The purpose of this subpart is to provide financial assistance to agricultural producers and rural small businesses for the purpose of purchasing and installing renewable energy systems and energy efficiency improvements in rural areas. Financial assistance to any single entity may be provided as a direct loan, guaranteed loan or grant, or a combination of a loan and grant. This subpart contains the procedures and requirements for providing such financial assistance.

(b) The Agency will allocate funds between the direct, guaranteed, and grant programs each year, including any other terms such as the transfer of funds between these allocations.

§ 4280.102 General.

(a) Sections 4280.103 through 4280.106 discuss definitions, exception authority, appeals, and conflict of interest, which are applicable to all of the funding programs under this subpart.

(b) Eligibility is discussed in terms of both applicants and projects. Section 4280.107 contains the eligibility requirements for applicants and § 4280.108 contains the eligibility requirements for projects.

(c) Section A, §§ 4280.109 through 4280.117, discusses grants. Section 4280.109 discusses the circumstances under which an applicant may qualify to submit a simplified application for a grant. Sections 4280.110 through 4280.114 address grant funding, grant application procedures, required documentation, the evaluation process, and post-grant Federal requirements for both the simplified and full application processes. Sections 4280.115 through 4280.117 address project planning, development, and completion as related to grant servicing.

(d) Section B, §§ 4280.121 through 4280.160, discusses guaranteed loans. Sections 4280.121 through 4280.126 discuss procedures and requirements for making and processing loans guaranteed by the Agency. Section 4280.128 addresses the application and documentation requirements, separating the requirements for loans over $600,000 and for loans of $600,000 or less. Section 4280.129 addresses the evaluation of guaranteed loan applications. Sections 4280.130 through 4280.160 provide guaranteed loan origination and servicing requirements. These requirements apply to lenders, holders, and other parties involved in making, guaranteeing, holding, servicing, or liquidating such loans.

(e) Section D presents the process by which the Agency will make direct loans.

(f) Section E presents the process by which the Agency will make combined loan and grant funding available.

(g) Appendix A contains the Technical Report requirements for projects with total eligible project costs of $200,000 or less and Appendix B contains the Technical Report requirements for projects with total eligible project costs greater than $200,000.

§ 4280.103 Definitions.

Terms used in this subpart are defined in either § 4279.2 of this chapter or in this section. If a term is defined in both § 4279.2 and this section, it will have, for purposes of this subpart only, the meaning given in this section.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the 9006 program. References to the National Office, Finance Office, State Office, or other Agency offices or officials should be read as prefaced by ''Agency'' or ''Rural Development'' as applicable.

Agricultural producer. An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or

greater of their gross income is derived from the operations.

Anaerobic digester project. A renewable energy system that uses animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

Annual receipts. The total income or gross income (sole proprietorship) plus cost of goods sold.

Applicant. The agricultural producer or rural small business that is seeking a grant, guaranteed loan, or direct loan, or a combination of a grant and loan, under this subpart.

Assignment guarantee agreement (Form RD 4279–6) or successor form. A signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan.

Bioenergy project. A renewable energy system that produces fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

Biogas. Biomass converted to gaseous fuels.

Biomass. Any organic material that is available on a renewable or recurring basis, including agricultural crops; trees grown for energy production; wood waste and wood residues; plants, including aquatic plants and grasses; fibers; animal waste and other waste materials; and fats, oils, and greases, including recycled fats, oils, and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. Any party or parties liable for a direct or guaranteed loan made under this subpart except guarantors.

Capacity. The maximum load that an apparatus or heating unit is able to meet on a sustained basis as rated by the manufacturer.

Commercially available. A system that has a proven operating history specific to the proposed application. Such a system is based on established design, and installation procedures and practices. Professional service providers, trades, large construction equipment providers, and labor are familiar with installation procedures and practices. Proprietary and balance of system equipment and spare parts are readily available. Service is readily available to properly maintain and operate the system. An established warranty exists for parts, labor, and performance.

Conditional Commitment (Form RD 4279–3) or successor form. Agency notice to the lender that the loan guarantee is approved subject to the completion of all conditions and requirements set forth by the Agency.

Default. The condition where a borrower or grantee is not in compliance with one or more loan covenants or grant conditions as stipulated in the Letter of Conditions, Conditional Commitment, or Loan or Grant Agreement.

Delinquent loan. A loan for which a scheduled loan payment has not been received by the due date or within any grace period as stipulated in the promissory note and loan agreement.

Demonstrated financial need. The demonstration by an applicant that the applicant is unable to finance the project from its own and commercially available resources without grant assistance, or that the project proposed by the applicant cannot achieve the income and cashflows to sustain it financially over the long term without grant assistance.

Design/build method. A method of project development whereby all design, engineering, procurement, construction, and other related project activities are performed under a single contract. The prime contractor is solely responsible and accountable for successful delivery of the project to the owner.

Eligible project costs. The total project costs that are eligible to be paid with program funds.

Energy assessment. A report conducted by an experienced energy assessor, certified energy manager or professional engineer assessing energy cost and efficiency by analyzing energy bills and briefly surveying the target building, machinery, or system. The report identifies and provides a savings and cost analysis of low-cost/no-cost measures. The report will estimate the overall costs and expected energy savings from these improvements, and dollars saved per year. The report will estimate weighted-average payback period in years.

Energy assessor. An individual or entity that conducts an energy assessment.

Energy audit. A report conducted by a Certified Energy Manager or Professional Engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The report will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions. It will estimate costs, expected energy savings from the subject improvements, and dollars saved per year. The report will estimate weighted-average payback period in years.

Energy auditor. An individual or entity that conducts an energy audit.

Energy efficiency improvement. Improvements to a facility, building, or process that reduces energy consumption, or reduces energy consumed per square foot.

Existing business. A business that has completed at least one full business cycle.

Fair market value of equity in real property. Fair market value of real property, as established by appraisal, less the outstanding balance of any mortgages, liens, or encumbrances.

Feasibility study. An analysis of the economic, market, technical, financial, and management feasibility of a proposed project or business.

Financial feasibility. The ability of a project or business to achieve the income, credit, and cashflows to financially sustain a project over the long term. The concept of financial feasibility includes assessments of the cost-accounting system, the availability of short-term credit for seasonal businesses, and the adequacy of raw materials and supplies.

Geothermal, direct use. A system that uses thermal energy directly from a geothermal source.

Geothermal, electric generation. A system that uses geothermal energy to produce high pressure steam for electric power production.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of Form RD 4279–6.

Hydrogen project. A renewable energy system that produces hydrogen or, a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

In-kind contributions. Applicant or third-party real or personal property or services benefiting the Federally assisted project or program that are contributed by the applicant or a third-party entity. The identifiable value of goods and services must directly benefit the project.

Interconnection agreement. The terms and conditions governing the interconnection and parallel operation of the grantee's or borrower's electric generation equipment and the utility's electric power system.

Interim financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan, cash, or other financing mechanism. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Large solar, electric. Large solar electric systems are those for which the rated power of the system is larger than 10 kilowatts (kW). Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar, thermal. Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

Large wind system. A wind energy project for which the rated power of the individual wind turbine(s) is larger than 100kW.

Lender. The organization making, servicing, and collecting the loan that is guaranteed under the provisions of this subpart.

Lender's agreement (Form RD 4279–4) or successor form. Agreement between the Agency and the lender setting forth the lender's loan responsibilities.

Loan Note Guarantee (Form RD 4279–5) or successor form. Issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the discounted collateral pledged as security for the loan.

Matching funds. The funds needed to pay for the portion of the eligible project costs not funded or guaranteed by the Agency through a grant, direct loan, or guaranteed loan under this program. Unless authorized by statute, matching funds cannot include grants from any Federal grant program.

Necessary capital improvement. A capital improvement required to keep an existing system in compliance with regulations or to maintain technical or operational feasibility.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender is affected on a pro rata basis.

Participation. The sale of interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Passive investor. An equity investor that does not actively participate in management and operation decisions of the business entity as evidenced by a contractual arrangement.

Post-application. The date that the Agency receives an essentially completed application. An ''essentially completed'' application is an application that contains all parts necessary for the Department of Agriculture (USDA) to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

Power purchase arrangement. The terms and conditions governing the sale and transportation of electricity produced by the grantee or borrower to another party.

Pre-commercial technology. Technology that has emerged through the research and development process and has technical and economic potential for commercial application, but is not yet commercially available.

Promissory Note. Evidence of debt. A note that a borrower signs promising to pay a specific amount of money at a stated time or on demand.

Qualified consultant. A third-party entity possessing the knowledge, expertise, and experience to perform in an efficient, effective, and authoritative manner the specific task required.

Qualified party. An entity possessing the knowledge, expertise, and experience to perform a specific task.

Renewable energy. Energy derived from a wind, solar, biomass, or geothermal source; or hydrogen derived from biomass or water using wind, solar, biomass, or geothermal energy sources.

Renewable energy system. A system that produces or produces and delivers usable energy from a renewable energy source.

Rural. Any area other than a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town according to the latest decennial census of the United States.

Simplified application. An application that conforms to the criteria and procedures specified in § 4280.109.

Small business. An entity is considered a small business in accordance with the Small Business Administration's (SBA) small business size standards by the North American Industry Classification System (NAICS) found in Title 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA's definition of small business. These entities must operate independent of direct Government control. With the exception of the entities described above, all other non-profit entities are excluded.

Small solar, electric. Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar, thermal. Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller or that have a collector area of 1,000 square feet or less.

Small wind system. Wind energy system for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. A small wind system is either stand-alone or connected to the local electrical system at less than 600 volts.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheets and income statements and may include cashflow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the data, spot trends, and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Total project cost. The sum of all costs associated with a completed project.

Used equipment. Any equipment that has been used in any previous application and is provided in an ''as is'' condition.

Very small business. A business with fewer than 15 employees and less than $1 million in annual receipts.

§ 4280.104 Exception authority.

The Administrator may, on a case-by-case basis, make an exception to any requirement or provision of this subpart that is not inconsistent with any authorizing statute or applicable law, if the Administrator determines that application of the requirement or provision would adversely affect the USDA's interest.

§ 4280.105 Appeals.

Only the grantee, borrower, lender, or holder can appeal an Agency decision made under this subpart. In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision may be appealed by the lender only. An adverse decision that only impacts the holder may be appealed by the holder only. A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, whether or not concurred in by the Agency. An adverse decision regarding a grant or direct loan application may be appealed by the applicant only. Appeals will be handled in accordance with 7 CFR part 11 of this title. Any party adversely affected by an Agency decision under this subpart may request a determination of appealability from the Director, National Appeals Division, USDA, within 30 days of the adverse decision.

§ 4280.106 Conflict of interest.

No conflict of interest or appearance of conflict of interest will be allowed. For purposes of this subpart, conflict of interest includes, but is not limited to, distribution or payment of grant, loan, and guaranteed loan funds or award of project contracts to an individual owner, partner, stockholder, or beneficiary of the applicant or borrower or a close relative of such an individual when such individual will retain any portion of the ownership of the applicant or borrower.

§ 4280.107 Applicant eligibility.

(a) To receive a grant or loan under this subpart, an applicant must meet each of the criteria, as applicable, as set forth in paragraphs (a)(1) through (5) of this section.

(1) The applicant must be an agricultural producer or rural small business.

(2) Individuals must be citizens of the United States (U.S.) or reside in the U.S. after being legally admitted for permanent residence.

(3) Entities must be at least 51 percent owned, directly or indirectly, by individuals who are either citizens of the U.S. or reside in the U.S. after being legally admitted for permanent residence.

(4) Applicants and owners will be ineligible to receive funds under this subpart as discussed in paragraphs (a)(4)(i) and (ii) of this section.

(i) If an applicant or owner has an outstanding judgment obtained by the U.S. in a Federal Court (other than in the United States Tax Court), is delinquent in the payment of Federal income taxes, or is delinquent on a Federal debt, the applicant is not eligible to receive a grant, direct loan, or guaranteed loan until the judgment is paid in full or otherwise satisfied or the delinquency is resolved.

(ii) If an applicant has been debarred from receiving Federal assistance, the applicant is not eligible to receive a grant, direct loan, or guaranteed loan under this subpart.

(5) A grant applicant must have demonstrated financial need.

(b) An applicant that has received one or more grants and/or loans under this program must make satisfactory progress, as determined by the Agency, toward completion of any previously funded projects before it will be considered for subsequent funding.

§ 4280.108 Project eligibility.

For a renewable energy system or energy efficiency improvement project to be eligible to receive a grant or loan under this subpart, the proposed project must meet each of the criteria, as applicable, in paragraphs (a) through (g) of this section.

(a) The project must be for the purchase of a renewable energy system or to make energy efficiency improvements.

(b) The project must be for a pre-commercial or commercially available, and replicable technology.

(c) The project must have technical merit, as determined using the procedures specified in § 4280.112(d).

(d) The project must be located in a rural area, as defined in § 4280.103.

(e) The applicant must be the owner of the project and control the revenues and expenses of the project, including operation and maintenance. A third-party under contract to the owner may be used to control revenues and expenses and manage the operation and/or maintenance of the project.

(f) Sites must be controlled by the agricultural producer or small business for the financing term of any associated Federal loans or loan guarantees.

(g) Satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and debt service of the project must be available for the life of the project.

Section A. Grants

§ 4280.109 Qualification for simplified applications.

When applying for a grant, applicants may qualify for the simplified application process. In order to use the simplified application process, each of the conditions specified in paragraphs (a)(1) through (8) of this section must be met.

(a) *Simplified application criteria.* (1) The applicant must be eligible in accordance with § 4280.107.

(2) The project must be eligible in accordance with § 4280.108.

(3) Total eligible project costs must be $200,000 or less.

(4) The proposed project must use commercially available renewable energy systems or energy efficiency improvements.

(5) Construction planning and performing development must be performed in compliance with § 4280.115. The applicant or the applicant's prime contractor must assume all risks and responsibilities of project development.

(6) The applicant or the applicant's prime contractor is responsible for all interim financing.

(7) The proposed project is scheduled to be completed within 24 months after entering into a grant agreement. The Agency may extend this period if the Agency determines, at its sole discretion, that the applicant is unable to complete the project for reasons beyond the applicant's control.

(8) The applicant agrees not to request reimbursement from funds obligated under this program until after project completion, including all operational testing and certifications acceptable to the Agency.

(b) *Application processing and administration.* (1) *Application documents.* Application documents shall be submitted in accordance with § 4280.111 or, if applying for a combined grant and loan, also in accordance with § 4280.193(c).

(2) *Demonstrated financial need.* The applicant must certify that it meets the definition of demonstrated financial need, as defined in § 4280.103. The Agency may require the applicant to provide supplemental information that will allow the Agency to make its own determination of the applicant's financial need.

(3) *Project development.* Section 4280.115 applies, except as follows:

(i) Any grantee may participate in project development without direct compensation subject to the approval in writing by the prime contractor, provided that all applicable construction practices, manufacturer instructions, and all safety codes and standards are followed during construction and testing, and the work product meets all applicable manufacture specifications, and all applicable codes and standards. The prime contractor remains responsible for all the overall successful completion of the project, including any work done by the grantee, or

(ii) A grantee who can demonstrate to the Agency that the grantee has the necessary experience and other resources to successfully complete the project may serve as the prime contractor/installer. Projects where the grantee serves as the prime contractor will need to secure the services of an independent, professionally responsible, qualified consultant to certify testing specifications, procedures, and testing results.

(4) *Project completion.* The project is complete when the applicant has provided a written final project development, testing, and performance report acceptable to the Agency. Upon notification of receipt of an acceptable project completion report, the applicant may request grant reimbursement. The Agency reserves the right to observe the testing.

(5) *Insurance.* Section 4280.113 applies, except business interruption insurance is not required.

§ 4280.110 Grant funding.

(a) The amount of grant funds that will be made available to an eligible project under this subpart will not exceed 25 percent of total eligible project costs. Eligible project costs are specified in paragraph (c) of this section.

(b) The applicant is responsible in securing the remainder of the total eligible project costs not covered by grant funds. The amount secured by the applicant must be the remainder of total eligible project costs.

(1) Without specific statutory authority, other Federal grant funds and applicant in-kind contributions cannot be used to meet the matching fund requirement. Third-party, in-kind contributions are limited to 10 percent of the matching fund requirement of the grant. The Agency will advise if the proposed third-party, in-kind contributions are acceptable in accordance with 7 CFR part 3015 of this title.

(2) Passive third-party equity contributions are acceptable for renewable energy system projects, including those that are eligible for Federal production tax credits, provided the applicant meets the requirements of § 4280.107.

(c) Eligible project costs are only those costs associated with the items identified in paragraphs (c)(1) through (9) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and Technical Reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and based on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency improvements are allowed.

(d) The maximum amount of grant assistance to one individual or entity will not exceed $750,000 per Federal fiscal year. For those applicants that have not received a grant award during the previous 2 Federal fiscal years, additional points will be added to their priority score.

(e) Applications for renewable energy system grants will be accepted for a minimum grant request of $2,500 up to a maximum of $500,000.

(f) Applications for energy efficiency improvement grants will be accepted for a minimum grant request of $1,500 up to a maximum of $250,000.

(g) In determining the amount of a grant awarded, the Agency will take into consideration the following six criteria:

(1) The type of renewable energy system to be purchased;

(2) The estimated quantity of energy to be generated by the renewable energy system;

(3) The expected environmental benefits of the renewable energy system;

(4) The extent to which the renewable energy system will be replicable;

(5) The amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under 7 U.S.C. 8105; and

(6) The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity.

§ 4280.111 Application and documentation.

The requirements in this section apply to grant applications under this subpart.

(a) *General.* Separate applications must be submitted for renewable energy system and energy efficiency improvement projects. Applicants may only submit one application for each type of project per Federal fiscal year. An original and one complete copy of each application are required that follow the outline below. Each application must include a Table of Contents with clear pagination and chapter identification.

(b) *Grant application content.* Applications and documentation for projects using the simplified application process, as described in § 4280.109, must provide the required information organized pursuant to the Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) through (3) and (b)(5) through (7) of this section; paragraph (b)(4) of this section does not apply for projects using the simplified application process. Applications and documentation for projects not using the simplified application process must provide the required information organized pursuant to the Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) through (8) of this section.

(1) *Forms, certifications, and organizational documents.* Each application must contain the items identified in paragraphs (b)(1)(i) through (iii) in this section.

(i) *Project specific forms.*

(A) Form SF–424, ''Application for Federal Assistance.''

(B) Form SF–424C, ''Budget Information—Construction Programs.'' A more detailed budget breakdown is required in the Technical Report.

(C) Form SF–424D, ''Assurances—Construction Programs.''

(D) Form RD 1940–20, ''Request for Environmental Information.''

(ii) *Certifications.*

(A) AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative 1—For Grantees Other than Individuals.''

(B) AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tiered Covered Transactions.''

(C) Exhibit A–1 of RD Instruction 1940–Q, ''Certification for Contracts, Grants and Loans,'' required by 7 CFR 3018.110 if the grant exceeds $100,000.

(D) Form SF–LLL, ''Disclosure of Lobbying Activities,'' must be completed if the applicant or borrower has made or agreed to make payment using funds other than Federal appropriated funds to influence or attempt to influence a decision in connection with the application.

(E) AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.''

(F) Form RD 400–1, ''Equal Opportunity Agreement.''

(G) Form RD 400–4, ''Assurance Agreement.''

(H) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V, of this title.

(I) Applicants and borrowers must provide a certification indicating whether or not there is a known relationship or association with an Agency employee.

(J) Applicants must provide certification that they meet the definition of demonstrated financial need, as defined in § 4280.103.

(iii) *Organizational documents.* Except for sole proprietors, each applicant must submit, with the application, a copy of the legal organizational documents.

(2) *Table of Contents.* Include page numbers for each component of the application in the table of contents. Begin pagination immediately following the Table of Contents.

(3) *Project Summary.* Provide a concise summary of the project proposal and applicant information, project purpose and need, and project goals that includes the following:

(i) *Title.* Provide a descriptive title of the project (identified on SF 424).

(ii) *Applicant eligibility.* Describe how each of the applicable criteria identified in § 4280.107(a)(1) through (5) is met.

(iii) *Project eligibility.* Describe how each of the criteria, as applicable, in § 4280.108(a) through (g) is met. Clearly state whether the application is for the purchase of a renewable energy system or to make energy efficiency improvements. The response to § 4280.108(a) must include a brief description of the system or improvement. This description must be sufficient to provide the reader with a frame of reference when reviewing the rest of the application. Additional project description information may be needed later in the application.

(iv) *Operation description.* Describe the applicant's total farm/ranch/business operation and the relationship of the proposed project to the applicant's total farm/ranch/business operation. Provide a description of the ownership of the applicant, including a list of individuals and/or entities with ownership interest, names of any corporate parents, affiliates, and subsidiaries, as well as a description of the relationship, including products, between these entities.

(v) *Financial information for size determination.* Provide financial information to allow the Agency to determine the applicant's size. All information submitted under this paragraph must be substantiated by authoritative records.

(A) *Rural small businesses.* Provide sufficient information to determine total annual receipts for and number of employees of the business and any parent, subsidiary, or affiliates at other locations. Voluntarily providing tax returns is one means of satisfying this requirement. The information provided must be sufficient for the Agency to make a determination of business size as defined by SBA.

(B) *Agricultural producers.* Provide the gross market value of your agricultural products, gross agricultural income, and gross nonfarm income of the applicant for the calendar year preceding the year in which you submit your application.

(4) *Financial information.* Financial information is required on the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(i) *Historical financial statements.* Provide historical financial statements prepared in accordance with Generally Accepted Accounting Practices (GAAP) for the past 3 years, including income statements and balance sheets. If agricultural producers are unable to present this information in accordance with GAAP, they may instead present financial information for the past years in the format that is generally required by commercial agriculture lenders.

(ii) *Current balance sheet and income statement.* Provide a current balance sheet and income statement prepared in accordance with GAAP and dated within 90 days of the application. Agricultural producers should present financial information in the format that is generally required by commercial agriculture lenders.

(iii) *Pro forma financial statements.* Provide pro forma balance sheet at start-up of the agricultural producer's/rural small business' business that reflects the use of the loan proceeds or grant award; and 3 additional years, indicating the necessary start-up capital, operating capital, and short-term credit; and projected cashflow and income statements for 3 years supported by a list of assumptions showing the basis for the projections.

(iv) *Demonstration of Financial Need.* Provide sufficient information or documentation that allows the Agency to make its own determination of the applicant's financial need.

(5) *Matching funds.* Submit a spreadsheet identifying sources of matching funds, amounts, and status of matching funds. The spreadsheet must also include a directory of matching funds source contact information. Attach any applications, correspondence, or other written communication between applicant and matching fund source.

(6) *Self-Evaluation Score.* Self-score the project using the evaluation criteria in § 4280.112(e). To justify the score, submit the total score along with appropriate calculations and attached documentation, or specific cross-references to information elsewhere in the application.

(7) *Renewable Energy and Energy Efficiency Improvements Technical Report.* A Technical Report must be submitted as part of the application to allow the Agency to determine the overall technical merit of the renewable energy system or energy efficiency improvement project.

(i) *Simplified applications.* Simplified applications, which are submitted for renewable energy projects or energy efficiency improvement projects with total eligible project costs of $200,000 or less, must include a Technical Report prepared in accordance with the requirements specified in paragraphs (b)(7)(i)(A) through (C) of this section.

(A) The Technical Report must be prepared in accordance with Appendix A of this subpart. If a renewable energy project does not fit one of the technologies identified in Appendix A, the applicant must submit a Technical Report in accordance with paragraph (b)(7)(ii) of this section. The information in all Technical Reports must be of sufficient detail to allow the Agency to score the project and evaluate its technical feasibility.

(B) Either an energy assessment or an energy audit is required for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted; it must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs of $50,000 or less, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

(C) Technical Reports prepared prior to the applicant's selection of a prime contractor may be modified after selection, pursuant to input from the prime contractor, and submitted to the Agency, provided the overall scope of the project is not materially changed as determined by the Agency. Changes in the report must be accompanied by an updated Form RD 1940–20.

(ii) *Full applications.* Full applications, which must be submitted for applications for renewable energy projects or energy efficiency improvement projects with total eligible project costs greater than $200,000, must include a full Technical Report prepared in accordance with Appendix B of this subpart and with paragraphs (b)(7)(ii)(A) through (G) of this section, as applicable.

(A) The Technical Report must demonstrate that the renewable energy system or energy efficiency improvement project can be installed and perform as intended in a reliable, safe, cost-effective, and legally compliant manner.

(B) Either an energy assessment or an energy audit is required for energy efficiency improvement projects. For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted; it must be conducted by or reviewed and certified by an energy auditor. For energy efficiency improvement projects with total eligible project costs of $50,000 or less, an energy assessment or an energy audit may be conducted by either an energy assessor or an energy auditor.

(C) For renewable energy projects with total eligible project costs greater than $400,000 and for energy efficiency improvement projects with total eligible project costs greater than $200,000, the design review, installation monitoring, testing prior to commercial operation, and project completion certification will require the services of a licensed professional engineer (PE) or team of licensed PEs.

(D) For projects with total eligible project costs greater than $1,200,000, the Technical Report must be reviewed and include an opinion and recommendation by an independent qualified consultant.

(E) Technical Reports prepared prior to the applicant's selection of a final design, equipment vendor, or prime contractor, or other significant decision may be modified and resubmitted to the Agency, provided the overall scope of the project is not materially changed as determined by the Agency. Changes in the Technical Report must be accompanied by an updated Form RD 1940–20.

(F) All information provided in the Technical Report will be evaluated against the requirements provided in Appendix B of this subpart. Any Technical Report not prepared in the following format and in accordance with Appendix B, where applicable, will be penalized under scoring for technical merit.

(G) All Technical Reports shall follow the outline presented below and shall contain the information described in paragraphs (b)(7)(ii)(G)(*1*) through (*10*) of this section and Appendix B, if the technology is identified in Appendix B for the particular project. If none of the Technical Reports in Appendix B apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in paragraph (b)(7)(ii)(G) of this section. For Technical Reports prepared for technologies not identified in Appendix B, the Agency will review the reports and notify, in writing, the applicant of the changes to the report required in order for the Agency to accept the report.

(*1*) *Qualifications of the project team.* Describe the project team, their professional credentials, and relevant experience. The description must support that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(*2*) *Agreements and permits.* Describe the necessary agreements and permits required for the project and the anticipated schedule for securing those agreements and permits. For example, interconnection agreements and purchase power arrangements are necessary for all renewable energy projects electrically interconnected to the utility grid. The applicant must demonstrate that the applicant is familiar with the regulations and utility policies and that these arrangements will be secured in a reasonable timeframe.

(*3*) *Energy or resource assessment.* Describe the quality and availability of the renewable resource, and an assessment of expected energy savings through the deployment of the proposed system or increased production created by the system.

(*4*) *Design and engineering.* Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description must support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, the applicant must identify all the major equipment that is proprietary equipment and justify how this unique equipment is needed to meet the requirements of the proposed design.

(*5*) *Project development.* Describe the overall project development method, including the key project development activities and the proposed schedule for each activity. The description must identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description must address applicant project development cashflow requirements. Details for equipment procurement and installation shall be addressed in paragraphs (b)(7)(ii)(G)(*7*) and (*8*) of this section.

(*6*) *Project economic assessment.* Describe the financial performance of the proposed project. The description must address project costs, energy savings, and revenues, including applicable investment and production incentives. Cost centers include, but are not limited to, administrative and general, fuel supply, operations and maintenance, product delivery and debt service. Revenues to be considered must accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Incentives to be considered must accrue from government entities.

(*7*) *Equipment procurement.* Describe the availability of the equipment required by the system. The description must support that the required equipment is available and can be procured and delivered within the proposed project development schedule.

(*8*) *Equipment installation.* Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement must be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

(*9*) *Operations and maintenance.* Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over the design life. All systems or improvements must have a warranty. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the renewable energy system or energy efficiency improvement must be monitored and recorded as appropriate to the specific technology.

(*10*) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at

the end of their useful lives. The budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes must also be described.

(8) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project, with total eligible project costs greater than $200,000, a business-level feasibility study by an independent, qualified consultant will be required by the Agency for start-up businesses or existing businesses. An acceptable business-level feasibility study must at least include an evaluation of economic, market, technical, financial, and management feasibility.

§ 4280.112 Evaluation of grant applications.

(a) *General review.* The Agency will evaluate each application and make a determination as to whether the applicant is eligible, the proposed grant is for an eligible project, and the proposed grant complies with all applicable statutes and regulations.

(b) *Ineligible applications.* If either the applicant or the project is ineligible, the Agency will inform the applicant in writing of the decision, reasons therefore, and any appeal rights. No further evaluation of the application will occur.

(c) *Incomplete applications.* If the application is incomplete, the Agency will return it to the applicant to provide the applicant the opportunity to resubmit the application. The Agency will identify those parts of the application that are incomplete. Upon receipt of a complete application, the Agency will complete its evaluation of the application.

(d) *Technical merit.* The Agency's determination of a project's technical merit will be based on the information provided by the applicant. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects that the Agency determines are without technical merit shall be deemed ineligible.

(e) *Evaluation criteria.* Agency personnel will score and fund each application based on the evaluation criteria specified in paragraphs (e)(1) through (9) of this section.

(1) *Quantity of energy replaced, produced, or saved.* Points may only be awarded for energy replacement, energy savings, or energy generation. Points will not be awarded for more than one category.

(i) *Energy replacement.* If the proposed renewable energy system is intended primarily for self-use by the agricultural producer or rural small business and will provide energy replacement of greater than zero, but equal to or less than 25 percent, 5 points will be awarded; greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or greater than 50 percent, 15 points will be awarded. Energy replacement is to be determined by dividing the estimated quantity of renewable energy to be generated over a 12-month period by the estimated quantity of energy consumed over the same 12-month period during the previous year by the applicable energy application. The estimated quantities of energy must be converted to either British thermal units (BTUs), Watts, or similar energy equivalents to facilitate scoring. If the estimated energy produced equals more than 150 percent of the energy requirements of the applicable process(es), the project will be scored as an energy generation project.

(ii) *Energy savings.* If the estimated energy expected to be saved by the installation of the energy efficiency improvements will be from 20 percent up to, but not including 30 percent, 5 points will be awarded; 30 percent up to, but not including 35 percent, 10 points will be awarded; or, 35 percent or greater, 15 points will be awarded. Energy savings will be determined by the projections in an energy assessment or audit. Projects with total eligible project costs of $50,000 or less that opt to obtain a professional energy audit will be awarded an additional 5 points.

(iii) *Energy generation.* If the proposed renewable energy system is intended primarily for production of energy for sale, 10 points will be awarded.

(2) *Environmental benefits.* If the purpose of the proposed system contributes to the environmental goals and objectives of other Federal, State, or local programs, 10 points will be awarded. Points will only be awarded for this paragraph if the applicant is able to provide documentation from an appropriate authority supporting this claim.

(3) *Commercial availability.* If the proposed system or improvement is currently commercially available and replicable, 5 points will be awarded. If the proposed system or improvement is commercially available and replicable and is also provided with a 5-year or longer warranty providing the purchaser protection against system degradation or breakdown or component breakdown, 10 points will be awarded.

(4) *Technical merit score.* The Technical Merit of each project will be determined using the procedures specified in paragraphs (e)(4)(i) and (ii) of this section. The procedures specified in paragraph (e)(4)(i) will be used to score paragraphs (e)(4)(i)(A) through (J) of this section. The final score awarded will be calculated using the procedures described in paragraph (e)(4)(ii) of this section.

(i) *Technical merit.* Each subparagraph has its own maximum possible score and will be scored according to the following criteria: If the description in the subparagraph has no significant weaknesses and exceeds the requirements of the subparagraph, 100 percent of the total possible score for the subparagraph will be awarded. If the description has one or more significant strengths and meets the requirements of the subparagraph, 80 percent of the total possible score will be awarded for the subparagraph. If the description meets the basic requirements of the subparagraph, but also has several weaknesses, 60 percent of the points will be awarded. If the description is lacking in one or more critical aspects, key issues have not been addressed, but the description demonstrates some merit or strengths, 40 percent of the total possible score will be awarded. If the description has serious deficiencies, internal inconsistencies, or is missing information, 20 percent of the total possible score will be awarded. If the description has no merit in this area, 0 percent of the total possible score will be awarded. The total possible points for Technical Merit is 35 points.

(A) *Qualifications of the project team (maximum score of 10 points).* The applicant has described the project team service providers, their professional credentials, and relevant experience. The description supports that the project team service, equipment, and installation providers have the necessary professional credentials, licenses, certifications, or relevant experience to develop the proposed project.

(B) *Agreements and permits (maximum score of 5 points).* The applicant has described the necessary agreements and permits required for the project and the schedule for securing those agreements and permits.

(C) *Energy or resource assessment (maximum score of 10 points).* The applicant has described the quality and availability of a suitable renewable resource or an assessment of expected energy savings for the proposed system.

(D) *Design and engineering (maximum score of 30 points).* The applicant has described the design, engineering, and testing needed for the proposed project. The description supports that the system will be designed, engineered, and tested so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

(E) *Project development schedule (maximum score of 5 points).* The applicant has described the development method, including the key project development activities and the proposed schedule for each activity. The description identifies each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. The description addresses grantee or borrower project development cashflow requirements.

(F) *Project economic assessment (maximum score of 20 points).* The applicant has described the financial performance of the proposed project, including the calculation of simple payback. The description addresses project costs and revenues, such as applicable investment and production incentives, and other information to allow the assessment of the project's cost effectiveness.

(G) *Equipment procurement (maximum score of 5 points).* The applicant has described the availability of the equipment required by the system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule.

(H) *Equipment installation (maximum score of 5 points).* The applicant has described the plan for site development and system installation.

(I) *Operation and maintenance (maximum score of 5 points).* The applicant has described the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life.

(J) *Dismantling and disposal of project components (maximum score of 5 points).* The applicant has described the requirements for dismantling and disposing of project components at the end of their useful life and associated wastes.

(ii) *Calculation of Technical Merit Score.* To determine the actual points awarded a project for Technical Merit, the following procedure will be used: The score awarded for paragraphs (e)(4)(i)(A) through (J) of this section will be added together and then divided by 100, the maximum possible score, to achieve a percentage. This percentage will then be multiplied by the total possible points of 35 to achieve the points awarded for the proposed project for Technical Merit.

(5) *Readiness.* If the applicant has written commitments from the source(s) confirming commitment of 50 percent up to but not including 75 percent of the matching funds prior to the Agency receiving the complete application, 5 points will be awarded. If the applicant has written commitments from the source(s) confirming commitment of 75 percent up to but not including 100 percent of the matching funds prior to the Agency receiving the complete application, 10 points will be awarded. If the applicant has written commitments from the source(s) of matching funds confirming commitment of 100 percent of the matching funds prior to the Agency receiving the complete application, 15 points will be awarded.

(6) *Small agricultural producer/very small business.* If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $600,000 in the preceding year, 5 points will be awarded. If the applicant is an agricultural producer producing agricultural products with a gross market value of less than $200,000 in the preceding year or is a very small business, as defined in § 4280.103, 10 points will be awarded.

(7) *Simplified application/low cost projects.* If the applicant is eligible for and uses the simplified application process or the project has total eligible project costs of $200,000 or less, 5 points will be awarded.

(8) *Previous grantees and borrowers.* If an applicant has not been awarded a grant or loan under this program within the 2 previous Federal fiscal years, 5 points will be awarded.

(9) *Return on investment.* If the proposed project will return the cost of the investment in less than 4 years, 10 points will be awarded; 4 years up to but not including 8 years, 4 points will be awarded; or 8 years up to 11 years, 2 point will be awarded.

§ 4280.113 Insurance requirements.

Agency approved insurance coverage must be maintained for the life of the grant unless this requirement is waived or modified by the Agency in writing.

(a) National flood insurance is required in accordance with 7 CFR part 1806, subpart B, of this title, if applicable.

(b) Business interruption insurance is required except for projects with total eligible project costs of $200,000 or less.

§ 4280.114 Laws that contain other compliance requirements.

(a) *Equal employment opportunity.* For all construction contracts and grants in excess of $10,000, the contractor must comply with Executive Order 11246, as amended by Executive Order 11375, and as supplemented by applicable Department of Labor regulations (41 CFR part 60). The applicant is responsible for ensuring that the contractor complies with these requirements.

(b) *Equal opportunity and nondiscrimination.* The Agency will ensure that equal opportunity and nondiscriminatory requirements are met in accordance with the Equal Credit Opportunity Act and 7 CFR 15d, Nondiscrimination in Programs and Activities, conducted by USDA. The Agency will not discriminate against applicants on the basis of race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(c) *Civil rights compliance.* Recipients of grants must comply with the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This may include collection and maintenance of data on the race, sex, and national origin of the recipient's membership/ownership and employees. These data must be available to conduct compliance reviews in accordance with 7 CFR part 1901, subpart E, § 1901.204 of this title. Initial reviews will be conducted after Form RD 400–4 is signed and all subsequent reviews every 3 years thereafter for loans. The last review shall occur 3 years after the date of loan closing. Grants will require one subsequent compliance review after the last disbursement of grant funds have been made, and the facility has been in full operation for 90 days.

(d) *Environmental analysis.* Subpart G of part 1940 of this title outlines environmental procedures and requirements for this subpart. Prospective applicants are advised to contact the Agency to determine environmental requirements as soon as practicable after they decide to pursue any form of financial assistance directly

or indirectly available through the Agency.

(1) Any required environmental review must be completed by the Agency prior to the Agency obligating any funds.

(2) The applicant will be notified of all specific compliance requirements, including, but not limited to, the publication of public notices, and consultation with State Historic Preservation Offices and the U.S. Fish and Wildlife Service.

(3) A site visit by the Agency may be scheduled, if necessary, to determine the scope of the review.

(4) The applicant taking any actions or incurring any obligations during the time of application or application review and processing that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction, will result in project ineligibility.

(e) *Executive Order 12898.* When a project is proposed and financial assistance requested, the Agency will conduct a Civil Rights Impact Analysis (CRIA) with regards to environmental justice. The CRIA must be conducted and the analysis documented utilizing Form RD 2006–38, ''Civil Rights Impact Analysis Certification.'' This certification must be done prior to loan approval, obligation of funds, or other commitments of Agency resources, including issuance of a Letter of Conditions or Form RD 4279–3 of guarantee, whichever occurs first.

(f) *Uniform Federal assistance regulations.* Grants will be administered in accordance with 7 CFR part 3015 of this title.

§ 4280.115 Construction planning and performing development.

The requirements of this section apply for planning, designing, bidding, contracting, and constructing renewable energy systems and energy efficiency improvement projects as applicable. For contracts of $200,000 or less, the simple contract method, as specified in paragraph (e) of this section, may be used. Contracts greater than $200,000 shall use the contract method specified in paragraph (g) of this section.

(a) *Technical services.* Applicants are responsible for providing the engineering, architectural, and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the applicant's ''in-house'' engineer or architect or through contract, subject to Agency concurrence. Engineers and architects must be licensed in the State where the facility is to be constructed.

(b) *Design policies.* Facilities funded by the Agency will meet the requirements of 7 CFR subpart C of part 1780, § 1780.57(b), (c), (d), and (o) of this title. Final plans and specifications must be reviewed by the Agency and approved prior to the start of construction.

(c) *Owners accomplishing work.* In some instances, owners may wish to perform a part of the work themselves. For an owner to perform project development work, the owner must meet the experience requirements of 7 CFR subpart C of part 1780, § 1780.67 of this title. For an owner to provide a portion of the work, with the remainder to be completed by a contractor, a clear understanding of the division of work must be established and delineated in the contract. In such cases, the contractor will be required to inspect the owner's work and accept it. Owners are not eligible for payment for their own work as it is not an eligible project cost. See § 4280.110(c) of this subpart for further details on eligible project costs.

(d) *Equipment purchases.* Equipment purchases of less than $200,000 will not require a performance and payment bond, unless required by the applicant, as long as the contract purchase is a lump sum payment and the manufacturer provides the required warranties on the equipment as outlined in paragraph (i) in the applicable section found in Appendices A and B of this subpart. Payment shall be certified by copies of the Manufacturer's paid invoices and warranty documents.

(e) *Simple contract method.* The simple contract method may be used for small projects with a contract not greater than $200,000. In smaller projects, Agency funds will typically be used to reimburse project costs upon completion of the work as a lump sum payment. Partial payments will be made in accordance with Form RD 4280–2, ''Grant Agreement,'' and Form RD 1924–6, ''Construction Contract,'' or other Agency approved contract. All construction work will be performed under a written contract, as described below. A design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used under this method.

(1) *Contracting requirements threshold.* For contracts above $100,000, certain Federal requirements, including surety, must be met. An attachment to the contract may be used to incorporate language for these requirements.

(2) *Forms used.* Form RD 1924–6 or other Agency approved contract must be used. Other contracts must be approved by the Agency and may be used only if they are customarily used in the area and protect the interest of the applicant and the Government with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(3) *Contract provisions.* Contracts will have a listing of attachments and the minimum provisions of the contract will include:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages to be charged;

(iv) The amount, method, and frequency of payment;

(v) Whether or not surety bonds will be provided. If not, a latent defects bond may be required, as described in paragraph (e)(4) of this section;

(vi) The requirement that changes or additions must have prior written approval of the Agency; and

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i)(1).

(4) *Surety.* Surety per 7 CFR subpart C of part 1780, § 1780.75(c) of this title will be required, and made a part of the contract, if the applicant requests it, or if the contractor requests partial payments for construction work. If the contractor will receive a lump sum payment at the end of work, the Agency will not require surety. In such cases where no surety is provided and the project involves pre-commercial technology, first of its type in the U.S., or new designs without sufficient operating hours to prove their merit, a latent defects bond may be required to cover the work.

(5) *Equal opportunity.* Section 1901.205 of subpart E of part 1901 of this title applies to all financial assistance involving construction contracts and subcontracts in excess of $10,000. Language for this requirement is included in Form RD 1924–6. If this form is not used, such language must be made a part of the Agency approved contract.

(6) *Obtaining bids and selecting a contractor.* (i) The applicant may select

a contractor and negotiate a contract or contact several contractors and request each to submit a bid. The applicant will provide a statement to the Agency describing the process for obtaining the bid(s) and what alternatives were considered.

(ii) When a price has already been negotiated by an applicant and a contractor, the Agency will review the proposed contract. If the contractor is qualified to perform the development and provide a warranty of the work and the price compares favorably with the cost of similar construction in the area, further negotiation is unnecessary. If the Agency determines the price is too high or otherwise unreasonable, the applicant will be required to negotiate further with the contractor. If a reasonable price cannot be negotiated or if the contractor is not qualified, the applicant will be required to negotiate with another contractor.

(iii) When an applicant has proposed development with no contractor in mind, competition will be required. The applicant must obtain bids from as many qualified contractors, dealers, or trades people as feasible depending on the method and type of construction.

(iv) If the award of the contract is by competitive bidding, Form RD 1924–5, ''Invitation for Bid (Construction Contract),'' or another similar Agency approved invitation bid form containing the requirements of subpart E of part 1901 of this title may be used. All contractors from whom bids are requested should be informed of all conditions of the contract, including the time and place of opening bids. Conditions shall not be established which would give preference to a specific bidder or type of bidder. When applicable, copies of Forms RD 1924–6 and RD 400–6, ''Compliance Statement,'' also should be provided to the prospective bidders.

(7) *Awarding the contract.* The applicant, with the concurrence of the Agency, will consider the amount of the bids or proposals, and all conditions listed in the invitation. On the basis of these considerations, the applicant will select and notify the lowest responsible bidder. The contract will be awarded using Form RD 1924–6 or similar Agency approved document as described in this section.

(8) *Final payments.* Prior to making final payment on the contract when a surety bond is not used, the Agency will be provided with Form RD 1924–9, ''Certificate of Contractor's Release,'' and Form RD 1924–10, ''Release by Claimants,'' executed by all persons who furnished materials or labor in connection with the contract. The applicant should furnish the contractor with a copy of Form RD 1924–10 at the beginning of the work in order that the contractor may obtain these releases as the work progresses.

(f) *Design/build contracts.* The design/build method, where the same person or entity provides design and engineering work, as well as construction or installation, may be used with Agency written approval. If the design/build contract amount is $200,000 or less, development and contracting will follow paragraph (e) of this section. If the design/build contract amount is greater than $200,000, Agency prior concurrence must be obtained as described below, and the remaining requirements of this section apply.

(1) *Concurrence information.* The applicant will request Agency concurrence by providing the Agency at least the information specified in paragraphs (f)(1)(i) through (viii) of this section.

(i) The owner's written request to use the design/build method with a description of the proposed method.

(ii) A proposed scope of work describing in clear, concise terms the technical requirements for the contract. It should include a nontechnical statement summarizing the work to be performed by the contractor and the results expected, and a proposed construction schedule showing the sequence in which the work is to be performed.

(iii) A proposed firm-fixed-price contract for the entire project which provides that the contractor shall be responsible for any extra cost which may result from errors or omissions in the services provided under the contract, as well as compliance with all Federal, State, and local requirements effective on the contract execution date.

(iv) Where noncompetitive negotiation is proposed, an evaluation of the contractor's performance on previous similar projects in which the contractor acted in a similar capacity.

(v) A detailed listing and cost estimate of equipment and supplies not included in the construction contract but which are necessary to properly operate the facility.

(vi) Evidence that a qualified construction inspector who is independent of the contractor has or will be hired.

(vii) Preliminary plans and outline specifications. However, final plans and specifications must be completed and reviewed by the Agency prior to the start of construction.

(viii) The owner's attorney's opinion and comments regarding the legal adequacy of the proposed contract documents and evidence that the owner has the legal authority to enter into and fulfill the contract.

(2) *Agency concurrence of design/build method.* The Agency shall review the material submitted by the applicant. When all items are acceptable, the loan approval official will concur in the use of the design/build method for the proposal.

(3) *Forms used.* The American Institute of Architects (AIA) Form A191, ''Standard Form of Agreement Between Owner and Design/Builder,'' should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(4) *Contract provisions.* Contracts will have a listing of attachments and shall meet the following requirements:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages, if any, to be charged;

(iv) The amount, method, and frequency of payment;

(v) Surety provisions that meet the requirements of 7 CFR subpart C of part 1780, § 1780.75(c) of this title;

(vi) The requirement that changes or additions must have prior written approval of the Agency;

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i);

(viii) Contract review and concurrence in accordance with 7 CFR subpart C of part 1780, § 1780.61(b) of this title;

(ix) Owner's contractual responsibility in accordance with 7 CFR subpart C of part 1780, § 1780.68 of this title; and

(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with 7 CFR subpart C of part 1780, § 1780.75 of this title.

(5) *Obtaining bids and selecting a contractor.* The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or noncompetitive negotiation as described in 7 CFR subpart C of part 1780, § 1780.72(b), (c), or (d) of this title.

(g) *Contract method.* If the contract amount is greater than $200,000 and is not of the design/build method, the following conditions must be met:

(1) *Procurement method.* Procurement method shall comply with the requirements of 7 CFR subpart C of part 1780, §§ 1780.72, 1780.75, and 1780.76 of this title.

(2) *Forms used.* The AIA Form A101, ''Standard Form of Agreement Between Owner/Contractor,'' or Engineering Joint Counsel Document Committee (EJCDC) Form C–521, ''Suggested Form of Agreement Between Owner and Contractor (Stipulated Price) Funding Agency Edition,'' should be used. Other Agency approved contract documents may be used provided they are customarily used in the area and protect the interest of the applicant and the Agency with respect to compliance with items such as the drawings, specifications, payments for work, inspections, completion, nondiscrimination in construction work, and acceptance of the work. The Agency will not become a party to a construction contract or incur any liability under it. No contract shall become effective until concurred in writing by the Agency. Such concurrence statement shall be attached to and made a part of the contract.

(3) *Contract provisions.* Contracts will have a listing of attachments and shall meet the requirements of 7 CFR subpart C of part 1780, § 1780.75 of this title and the following requirements:

(i) The contract sum;

(ii) The dates for starting and completing the work;

(iii) The amount of liquidated damages, if any, to be charged;

(iv) The amount, method, and frequency of payment;

(v) Surety provisions that meet the requirements of 7 CFR subpart C of part 1780, § 1780.75(c) of this title;

(vi) The requirement that changes or additions must have prior written approval of the Agency;

(vii) The warranty period to be provided in accordance with Appendices A and B, sections 1 through 10, paragraph (i);

(viii) Contract review and concurrence in accordance with 7 CFR subpart C of part 1780, § 1780.61(b) of this title;

(ix) Owner's contractual responsibility in accordance with 7 CFR subpart C of part 1780, § 1780.68 of this title; and

(x) Further contract provisions concerning remedies, termination, surety, equal employment opportunity, anti-kickback, records, State energy conservation plan, change orders, Agency concurrence, retainage, and other compliance requirements must be met in accordance with 7 CFR subpart C of part 1780, § 1780.75 of this title.

(4) *Obtaining bids and selecting a contractor.* The applicant may select a contractor based on competitive sealed bids, competitive negotiation, or noncompetitive negotiation as described in 7 CFR subpart C of part 1780, § 1780.72(b), (c), or (d) of this title.

(5) *Contract award.* Applicants awarding contracts must comply with 7 CFR subpart C of part 1780, § 1780.70(h) of this title.

(6) *Contracts awarded prior to applications.* Applicants awarding contracts prior to filing an application must comply with 7 CFR subpart C of part 1780, § 1780.74 of this title.

(7) *Contract administration.* Contract administration must comply with 7 CFR subpart C of part 1780, § 1780.76 of this title. If another authority, such as a Federal or State Agency, is providing funding and requires oversight of inspections, change orders, and pay requests, the Agency may accept copies of their reports or forms as meeting oversight requirements of the Agency.

§ 4280.116 Grantee requirements.

(a) A Letter of Conditions will be prepared by the Agency, establishing conditions that must be understood and agreed to by the applicant before any obligation of funds can occur. The applicant must sign a ''Letter of Intent to Meet Conditions'' and Form RD 1940–1, ''Request for Obligation of Funds,'' if they accept the conditions of the grant.

(b) The grantee must sign and abide by all requirements contained in Form RD 4280–2 and this subpart.

§ 4280.117 Servicing grants.

Grants will be serviced in accordance with subparts E and O of part 1951 of this title and Form RD 4280–2.

§§ 4280.118—4280.120 [Reserved]

Section B. Guaranteed Loans

§ 4280.121 Borrower eligibility.

To receive a guaranteed loan under this subpart, a borrower must meet each of the criteria, as applicable, identified in § 4280.107(a)(1) through (4).

§ 4280.122 Project eligibility.

For a project to be eligible to receive a guaranteed loan under this subpart, the project must meet each of the criteria, as applicable, in § 4280.108(a) through (g). In addition, guaranteed loan funds may be used for necessary capital improvements to an existing renewable energy system.

§ 4280.123 Guaranteed loan funding.

(a) The amount of the loan that will be made available to an eligible project under this subpart will not exceed 50 percent of total eligible project costs. Eligible project costs are specified in paragraph (e) of this section.

(b) The minimum amount of a guaranteed loan made to a borrower will be $5,000, less any program grant amounts. The maximum amount of a guaranteed loan made to a borrower is $10 million.

(c) The percentage of guarantee, up to the maximum allowed by this section, will be negotiated between the lender and the Agency. The maximum percentage of guarantee is 85 percent for loans of $600,000 or less; 80 percent for loans greater than $600,000 up to and including $5 million; and 70 percent for loans greater than $5 million up to and including $10 million.

(d) The total amount of the loans guaranteed by the Agency under this program to one borrower, including the outstanding principal and interest balance of any existing loans guaranteed by the Agency under this program, and new loan request, must not exceed $10 million.

(e) Eligible project costs are only those costs associated with the items identified in paragraphs (e)(1) through (11) of this section, as long as the items are an integral and necessary part of the renewable energy system or energy efficiency improvement.

(1) Post-application purchase and installation of equipment (new, refurbished, or remanufactured), except agricultural tillage equipment, used equipment, and vehicles.

(2) Post-application construction or improvements, except residential.

(3) Energy audits or assessments.

(4) Permit and license fees.

(5) Professional service fees, except for application preparation.

(6) Feasibility studies and technical reports.

(7) Business plans.

(8) Retrofitting.

(9) Construction of a new energy efficient facility only when the facility is used for the same purpose, is approximately the same size, and based on the energy audit will provide more energy savings than improving an existing facility. Only costs identified in the energy audit for energy efficiency improvements are allowed.

(10) Working capital.

(11) Land acquisition.

(f) In determining the amount of a loan awarded, the Agency will take into consideration the following six criteria:

(1) The type of renewable energy system to be purchased;

(2) The estimated quantity of energy to be generated by the renewable energy system;

(3) The expected environmental benefits of the renewable energy system;

(4) The extent to which the renewable energy system will be replicable;

(5) The amount of energy savings expected to be derived from the activity, as demonstrated by an energy audit comparable to an energy audit under 7 U.S.C. 8105; and

(6) The estimated length of time it would take for the energy savings generated by the activity to equal the cost of the activity.

§ 4280.124 Interest rates.

(a) The interest rate for the guaranteed loan will be negotiated between the lender and the applicant and may be either fixed or variable as long as it is a legal rate. The variable rate must be based on published indices, such as money market indices. In no case, however, shall the rate be more than the rate customarily charged borrowers in similar circumstances in the ordinary course of business. The interest rate charged is subject to Agency review and approval.

(b) Comply with § 4279.125(a), (b), and (d) of this chapter.

§ 4280.125 Terms of loan.

(a) The repayment term for a loan for:

(1) Real estate must not exceed 30 years;

(2) Machinery and equipment must not exceed 20 years, or the useful life, including major rebuilds and component replacement, whichever is less;

(3) Combined loans on real estate and equipment must not exceed 30 years; and

(4) Working capital loans must not exceed 7 years.

(b) The first installment of principal and interest will, if possible, be scheduled for payment after the project is operational and has begun to generate income.

(c) Payment terms must comply with § 4279.126(c) of this chapter.

(d) The maturity of a loan will be based on the use of proceeds, the useful life of the assets being financed, and the borrower's ability to repay.

(e) All loans guaranteed through this program must be sound, with reasonably assured repayment.

(f) Guarantees must be provided only after consideration is given to the borrower's overall credit quality and to the terms and conditions of renewable energy and energy efficiency subsidies, tax credits, and other such incentives.

(g) A principal plus interest repayment schedule is permissible.

§ 4280.126 Guarantee/annual renewal fee percentages.

(a) *Fee ceilings.* The maximum guarantee fee that may be charged is 1 percent. The maximum annual renewal fee that may be charged is 0.5 percent. The Agency will establish each year the guarantee fee and annual renewal fee and a notice will be published in the **Federal Register**.

(b) *Guarantee fee.* The guarantee fee will be paid to the Agency by the lender and is nonrefundable. The guarantee fee may be passed on to the borrower. The guarantee fee must be paid at the time the Loan Note Guarantee is issued.

(c) *Annual renewal fee.* The annual renewal fee will be calculated on the unpaid principal balance as of close of business on December 31 of each year. It will be calculated by multiplying the outstanding principal balance times the percent of guarantee times the annual renewal fee. The fee will be billed to the lender in accordance with the **Federal Register** publication. The annual renewal fee may not be passed on to the borrower.

§ 4280.127 [Reserved]

§ 4280.128 Application and documentation.

The requirements in this section apply to guaranteed loan applications under this subpart.

(a) *General.* Applications must be submitted in accordance with the requirements specified in § 4280.111(a).

(b) *Application content for guaranteed loans greater than $600,000.* Applications and documentation for guaranteed loans greater than $600,000 must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in paragraphs (b)(1) and (2) of this section.

(1) *Guaranteed loan application content.* (i) *Table of Contents.* Include page numbers for each component of the application in the table of contents. Begin pagination immediately following the Table of Contents.

(ii) *Project Summary.* Provide a concise summary of the proposed project and applicant information, project purpose and need, and project goals, including the following:

(A) *Title.* Provide a descriptive title of the project (identified on SF 424).

(B) *Borrower eligibility.* Describe how each of the criteria, identified in § 4280.107(a)(1) through (4), is met.

(C) *Project eligibility.* Describe how each of the criteria, as applicable in § 4280.108(a) through (g), is met. Clearly state whether the application is for the purchase of a renewable energy system (including making necessary capital improvements to an existing renewable energy system) or to make energy efficiency improvements. The response to § 4280.108(a) must include a brief description of the system or improvement. This description is to provide the reader with a frame of reference for reviewing the rest of application. Additional project description information will be needed later in the application.

(D) *Operation description.* Describe the applicant's total farm/ranch/business operation and the relationship of the proposed project to the applicant's total farm/ranch/business operation as specified in § 4280.111(b)(3)(iv).

(iii) *Financial information for size determination.* Provide financial information to allow the Agency to determine the applicant's size as specified in § 4280.111(b)(3)(v).

(iv) *Matching funds.* Submit a spreadsheet identifying sources, amounts, and status of matching funds as specified in § 4280.111(b)(5).

(v) *Self-evaluation score.* Self-score the project using the evaluation criteria in § 4280.112(e) as specified in § 4280.111(b)(6).

(vi) *Renewable energy and energy efficiency technical report.* For both renewable energy projects and energy efficiency improvement projects, submit a Technical Report in accordance with applicable provisions of Appendix B of this subpart and as specified in § 4280.111(b)(7)(ii). For loan requests in excess of $600,000, the services of a licensed professional engineer (P.E.) or a team of licensed P.E.'s is required. If none of the Technology Reports in Appendix B apply to the proposed technology, the applicant may submit a Technical Report that conforms to the overall outline and subjects specified in applicable provisions of § 4280.111(b)(7)(ii)(A) through (G).

(vii) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must at least include an evaluation of economic,

market, technical, financial, and management feasibility.

(2) *Lender forms, certifications, and agreements.* Each application submitted under paragraph (b)(1) of this section must contain applicable items described in paragraphs (b)(2)(i) through (xii) of this section.

(i) A completed Form RD 4279–1, ''Application for Loan Guarantee.''

(ii) Form RD 1940–20.

(iii) A personal credit report from an Agency approved credit reporting company for each owner, partner, officer, director, key employee, and stockholder owning 20 percent or more interest in the borrower's business, except passive investors and those corporations listed on a major stock exchange.

(iv) Appraisals completed in accordance with § 4280.141. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the applicant must submit an estimated appraisal. In all cases, a completed appraisal must be submitted prior to the loan being closed.

(v) Commercial credit reports obtained by the lender on the borrower and any parent, affiliate, and subsidiary firms.

(vi) Current personal and corporate financial statements of any guarantors.

(vii) Intergovernmental consultation comments in accordance with 7 CFR part 3015, subpart V, of this title.

(viii) Financial statements as specified in § 4280.111(b)(4)(i) through (iii). Financial information is required on the total operation of the agricultural producer/rural small business and its parent, subsidiary, or affiliates at other locations. All information submitted under this paragraph must be substantiated by authoritative records.

(ix) Business-level feasibility study.

(x) Lender's complete comprehensive written analysis in accordance with § 4280.139.

(xi) A certification by the lender that it has completed a comprehensive written analysis of the proposal, the borrower is eligible, the loan is for authorized purposes with technical merit, and there is reasonable assurance of repayment ability based on the borrower's history, projections, equity, and the collateral to be obtained.

(xii) A proposed Loan Agreement or a sample Loan Agreement with an attached list of the proposed Loan Agreement provisions. The following requirements must be addressed in the proposed or sample Loan Agreement:

(A) Prohibition against assuming liabilities or obligations of others;

(B) Restriction on dividend payments;

(C) Limitation on the purchase or sale of equipment and fixed assets;

(D) Limitation on compensation of officers and owners;

(E) Minimum working capital or current ratio requirement;

(F) Maximum debt-to-net worth ratio;

(G) Restrictions concerning consolidations, mergers, or other circumstances;

(H) Limitations on selling the business without the concurrence of the lender;

(I) Repayment and amortization of the loan;

(J) List of collateral and lien priority for the loan, including a list of persons and corporations guaranteeing the loan with a schedule for providing the lender with personal and corporate financial statements. Financial statements for corporate and personal guarantors must be updated at least annually once the guarantee is provided;

(K) Type and frequency of financial statements to be required from the borrower for the duration of the loan;

(L) The addition of any requirements imposed by the Agency in Form RD 4279–3;

(M) A reserved section for any Agency environmental requirements; and

(N) A provision for the lender or the Agency to have reasonable access to the project and its performance information during its useful life or the term of the loan, whichever is longer, including the periodic inspection of the project by a representative of the lender or the Agency.

(c) *Application content for guaranteed loans of $600,000 or less.* Applications and documentation for guaranteed loans $600,000 or less must comply with paragraphs (c)(1) and (2) of this section.

(1) *Application Contents.* Applications and documentation for guaranteed loans $600,000 or less must provide the required information organized pursuant to a Table of Contents in a chapter format presented in the order shown in § 4280.111(b)(2) through (8), except as specified in paragraphs (c)(1)(i) through (iii) of this section.

(i) Section 4280.111(b)(7)(i) does not apply.

(ii) Technical Reports must be submitted according to paragraph (c)(1)(ii)(A) or (B) of this section, as applicable.

(A) For renewable energy projects and energy efficiency projects utilizing commercially available systems or improvements and with total eligible project costs of $200,000 or less, submit a Technical Report as described in Appendix A of this subpart. If a renewable energy project does not fit on of the technologies identified in Appendix A, the applicant must submit a Technical Report that conforms to the overall outline and subjects specified in § 4280.111(b)(7)(ii)(G).

(B) For renewable energy projects and energy efficiency projects utilizing pre-commercial technology or with total eligible project costs greater than $200,000, submit a Technical Report as described in Appendix B of this subpart and as specified in § 4280.111(b)(7)(ii)(G)(*1*) through (*10*), as applicable.

(iii) *Business-level feasibility study for renewable energy systems.* For each application for a renewable energy system project submitted by a start-up or existing business, a business-level feasibility study by an independent qualified consultant will be required by the Agency. An acceptable business-level feasibility study must at least include an evaluation of economic, market, technical, financial, and management feasibility. Renewable energy projects with total eligible project costs of $200,000 or less are exempt from the feasibility study requirement.

(2) *Lender forms, certifications, and agreements.* Applications submitted under paragraph (c) of this section must use Form RD 4279–1A, ''Application for Loan Guarantee, Short Form,'' and include the documentation contained in paragraphs (b)(2)(ii), (vii), (viii), (ix), (x), and (xii) of this section. The lender must have the documentation contained in paragraphs (b)(2)(iii), (iv), (v), (vi), and (xi) available in its files for the Agency's review.

§ 4280.129 Evaluation of guaranteed loan applications.

(a) *General review.* The Agency will evaluate each application to confirm that both the borrower and project are eligible, the project has technical merit, there is reasonable assurance of repayment, there is sufficient collateral and equity, and the proposed loan complies with all applicable statutes and regulations. If the Agency determines it is unable to guarantee the loan, the lender will be informed in writing. Such notification will include the reasons for denial of the guarantee.

(b) *Ineligible applications.* If either the borrower or the project is ineligible, the Agency will inform the lender in writing of the reasons and provide any appeal rights. No further evaluation of the application will occur.

(c) *Incomplete applications.* If the application is incomplete, the Agency will identify those parts of the application that are incomplete and return it, with a written explanation, to

the lender for possible future resubmission. Upon receipt of a complete application, the Agency will complete its evaluation.

(d) *Technical merit determination.* The Agency's determination of a project's technical merit will be based on the information provided by the applicant. The Agency may engage the services of other government agencies or recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. The Agency may use this evaluation and rating to determine the level of technical merit of the proposed project. Projects determined by the Agency to be without technical merit shall be deemed ineligible.

(e) *Evaluation criteria.* The Agency will score each application based on the evaluation criteria specified in § 4280.112(e) (except for the criteria specified in § 4280.112(e)(5)) and in paragraphs (e)(1) and (2) of this section. Points will be awarded for either paragraph (e)(1) or (2) of this section, but not both.

(1) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1.5 percent, 5 points will be awarded.

(2) If the interest rate on the loan is to be below the prime rate (as published in The Wall Street Journal) plus 1 percent, 10 points will be awarded.

§ 4280.130 Eligible lenders.

Eligible lenders are those identified in § 4279.29 of this chapter, excluding mortgage companies that are part of a bank-holding company.

§ 4280.131 Lender's functions and responsibilities.

(a) *General.* Lenders are responsible for implementing the guaranteed loan program under this subpart. All lenders requesting or obtaining a loan guarantee must comply with § 4279.30(a)(1)(i) through (ix) of this chapter.

(b) *Credit evaluation.* The lender's credit evaluation must comply with § 4279.30(b) of this chapter.

(c) *Environmental information.* Lenders must ensure that borrowers furnish all environmental information required under 7 CFR part 1940, subpart G, of this title and must comply with § 4279.30(c) of this chapter.

(d) *Construction planning and performing development.* The lender must comply with § 4279.156(a) and (b) of this chapter, except under paragraph § 4279.156(a) of this chapter, the lender must also ensure that all project facilities are designed utilizing accepted architectural and engineering practices that conform to the requirements of this subpart.

(e) *Loan closing.* The loan closing must be in compliance with § 4279.30(d) of this chapter.

§ 4280.132 Access to records.

Both the lender and borrower must permit representatives of the Agency (or other agencies of the U.S.) to inspect and make copies of any records pertaining to any Agency guaranteed loan during regular office hours of the lender or borrower or at any other time upon agreement between the lender, the borrower, and the Agency, as appropriate.

§ 4280.133 Conditions of guarantee.

All loan guarantees will be subject to § 4279.72 of this chapter.

§ 4280.134 Sale or assignment of guaranteed loan.

Any sale or assignment of the guaranteed loan must be in accordance with § 4279.75 of this chapter.

§ 4280.135 Participation.

All participation must be in accordance with § 4279.76 of this chapter.

§ 4280.136 Minimum retention.

Minimum retention must be in accordance with § 4279.77 of this chapter.

§ 4280.137 Repurchase from holder.

Any repurchase from a holder must be in accordance with § 4279.78 of this chapter.

§ 4280.138 Replacement of document.

Documents must be replaced in accordance with § 4279.84 of this chapter, except, in § 4279.84(b)(1)(v), a full statement of the circumstances of any defacement or mutilation of the Loan Note Guarantee or Assignment Guarantee Agreement would also need to be provided.

§ 4280.139 Credit quality.

The lender must determine credit quality and must address all of the elements of credit quality in a written credit analysis, including adequacy of equity, cashflow, collateral, history, management, and the current status of the industry for which credit is to be extended.

(a) *Cashflow.* All efforts will be made to structure debt so that the business has adequate debt coverage and the ability to accommodate expansion.

(b) *Collateral.* Collateral must have documented value sufficient to protect the interest of the lender and the Agency. The discounted collateral value will normally be at least equal to the loan amount. Lenders will discount collateral consistent with sound loan-to-value policy. Guaranteed loans made under this subpart shall have at least parity position with guaranteed loans made under subpart B of part 4279 of this title.

(c) *Industry.* The current status of the industry will be considered. Borrowers developing well established commercially available renewable energy systems with significant support infrastructure may be considered for better terms and conditions than those borrowers developing systems with limited infrastructure.

(d) *Equity.* In determining the adequacy of equity, the lender must meet the criteria specified in paragraph (d)(1) of this section for loans over $600,000 and the criteria in paragraph (d)(2) of this section for loans of $600,000 or less. Cash equity injection, as discussed in paragraphs (d)(1) and (2) of this section, must be in the form of cash. Federal grant funds may be counted as cash equity.

(1) For loans over $600,000, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 25 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than 1 year old and must meet Agency appraisal standards.

(2) For loans of $600,000 or less, borrowers shall demonstrate evidence of cash equity injection in the project of not less than 15 percent of eligible project costs. The fair market value of equity in real property that is to be pledged as collateral for the loan may be substituted in whole or in part to meet the cash equity requirement. However, the appraisal completed to establish the fair market value of the real property must not be more than 1 year old and must meet Agency appraisal standards.

(e) *Lien priorities.* The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior position may be considered provided that discounted collateral values are adequate to secure the loan in accordance with paragraph (b) of this section after considering prior liens.

§ 4280.140 Financial statements.

(a) The financial information required in § 4280.111(b)(3)(v) and (b)(4) is

required for the guaranteed loan program.

(b) If the proposed guaranteed loan exceeds $3 million, the Agency may require annual audited financial statements, at its sole discretion when the Agency is concerned about the applicant's credit risk.

§ 4280.141 Appraisals.

(a) *Conduct of appraisals.* All appraisals must be in accordance with § 4279.144 of this chapter.

(1) For loans of $600,000 or more, a complete self-contained appraisal must be conducted. Lenders must complete at least a Transaction Screen Questionnaire for any undeveloped sites and a Phase I environmental site assessment on existing business sites, which should be provided to the appraiser for completion of the self-contained appraisal.

(2) For loans for less than $600,000, a complete summary appraisal may be conducted in lieu of a complete self-contained appraisal as required under paragraph (a)(1) of this section. Summary appraisals must be conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP).

(b) *Specialized appraisers.* Specialized appraisers will be required to complete appraisals in accordance with paragraphs (a)(1) and (2) of this section. The Agency may approve a waiver of this requirement only if a specialized appraiser does not exist in a specific industry or hiring one would cause an undue financial burden to the borrower.

§ 4280.142 Personal and corporate guarantees.

(a) All personal and corporate guarantees must be in accordance with § 4279.149(a) of this chapter.

(b) Except for passive investors, unconditional personal and corporate guarantees for those owners with a beneficial interest greater than 20 percent of the borrower will be required where legally permissible.

§ 4280.143 Loan approval and obligation of funds.

The lender and applicant must comply with § 4279.173 of this chapter, except that either or both parties may also propose alternate conditions to the Conditional Commitment if certain conditions cannot be met.

§ 4280.144 Transfer of lenders.

All transfers of lenders must be in accordance with § 4279.174 of this chapter, except that it will be the Agency rather than the loan approval official who may approve the substitution of a new eligible lender.

§ 4280.145 Changes in borrower.

All changes in borrowers must be in accordance with § 4279.180 of this chapter, but the eligibility requirements of this program apply.

§ 4280.146 Conditions precedent to issuance of Loan Note Guarantee.

(a) The Loan Note Guarantee will not be issued until the lender certifies to the conditions identified in paragraphs § 4279.181(a) through (o) of this chapter and paragraph (b) of this section.

(b) All planned property acquisitions and development have been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications, conforms with applicable Federal, State, and local codes, and costs have not exceeded the amount approved by the lender and the Agency.

§ 4280.147 Issuance of the guarantee.

(a) When loan closing plans are established, the lender must notify the Agency in writing. At the same time, or immediately after loan closing, the lender must provide the following to the Agency:

(1) Lender's certifications as required by § 4280.146;

(2) An executed Form RD 4279–4; and

(3) An executed Form RD 1980–19, ''Guaranteed Loan Closing Report,'' and appropriate guarantee fee.

(b) When the Agency is satisfied that all conditions for the guarantee have been met, the Loan Note Guarantee and the following documents, as appropriate, will be issued:

(1) *Assignment Guarantee Agreement.* If the lender assigns the guaranteed portion of the loan to a holder, the lender, holder, and the Agency must execute the Assignment Guarantee Agreement;

(2) *Certificate of Incumbency.* If requested by the lender, the Agency will provide the lender with a copy of Form RD 4279–7, ''Certificate of Incumbency and Signature,'' with the signature and title of the Agency official responsible for signing the Loan Note Guarantee, Lender's Agreement, and Assignment Guarantee Agreement;

(3) Copies of legal loan documents; and

(4) Disbursement plan, if working capital is a purpose of the project.

§ 4280.148 Refusal to execute Loan Note Guarantee.

If the Agency determines that it cannot execute the Loan Note Guarantee, § 4279.187 of this chapter will apply.

§ 4280.149 Requirements after project construction.

Once the project has been constructed, the lender must provide the Agency periodic reports from the borrower. The borrower's reports will include the information specified in paragraphs (a) and (b) of this section, as applicable.

(a) *Renewable energy projects.* For renewable energy projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 3 full years, provide a report detailing the information specified in paragraphs (a)(1) through (7) of this section.

(1) The actual amount of energy produced in BTUs, kilowatt-hours, or similar energy equivalents.

(2) If applicable, documentation that any identified health and/or sanitation problem has been solved.

(3) The annual income and/or energy savings of the renewable energy system.

(4) A summary of the cost of operating and maintaining the facility.

(5) A description of any maintenance or operational problems associated with the facility.

(6) Recommendations for development of future similar projects.

(7) Actual jobs created or saved.

(b) *Energy efficiency improvement projects.* For energy efficiency improvement projects, commencing the first full calendar year following the year in which project construction was completed and continuing for 2 full years, provide a report detailing the actual amount of energy saved due to the energy efficiency improvements.

§ 4280.150 Insurance requirements.

Each borrower must obtain the insurance required in § 4280.113. The coverage required by this section must be maintained for the life of the loan unless this requirement is waived or modified by the Agency in writing.

§ 4280.151 Laws that contain other compliance requirements.

Each lender and borrower must comply with the requirements specified in § 4280.114(d), §§ 4279.58, and 4279.156(c) and (d) of this chapter.

§ 4280.152 Servicing guaranteed loans.

The lender must service the entire loan and must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the loan. The entire loan must be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of a loan will neither be paid first nor given any

preference or priority over the guaranteed portion of the loan.

(a) *Routine servicing.* Comply with § 4287.107 of this chapter, except that all notifications from the lender to the Agency shall be in writing and all actions by the lender in servicing the entire loan must be consistent with the servicing actions that a reasonable, prudent lender would perform in servicing its own portfolio.

(b) *Interest rate adjustments.* Comply with § 4287.112 of this chapter, except that under § 4287.112(a)(3) of this chapter the interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by § 4280.124.

(c) *Release of collateral.* (1) Collateral may only be released in accordance with § 4287.113(a) and (b) of this chapter and paragraph (c)(2) of this section.

(2) Within the parameters of paragraph (c)(1) of this section, lenders may, over the life of the loan, release collateral (other than personal and corporate guarantees) with a cumulative value of up to 20 percent of the original loan amount without Agency concurrence, if the proceeds generated are used to reduce the guaranteed loan or to buy replacement collateral or real estate equal to or greater than the collateral being replaced.

(d) *Subordination of lien position.* All subordinations of the lender's lien position must comply with § 4287.123 of this chapter.

(e) *Alterations of loan instruments.* All alterations of loan instruments must comply with § 4287.124 of this chapter.

(f) *Loan transfer and assumption.* All loan transfers and assumptions must comply with § 4287.134(c), (d), (f), (g), and (i) through (k) of this chapter in addition to the following:

(1) *Documentation of request.* All transfers and assumptions must be approved in writing by the Agency and must be to eligible applicants in accordance with § 4280.121. An individual credit report must be provided for transferee proprietors, partners, offices, directors, and stockholders with 20 percent or more interest in the business, along with such other documentation as the Agency may request to determine eligibility.

(2) *Terms.* Loan terms must not be changed unless the change is approved in writing by the Agency with the concurrence of any holder and the transferor (including guarantors), if they have not been or will not be released from liability. Any new loan terms must be within the terms authorized by § 4280.125. The lender's request for approval of new loan terms will be supported by an explanation of the reasons for the proposed change in loan terms.

(3) *Additional loans.* Loans to provide additional funds in connection with a transfer and assumption must be considered as a new loan application under § 4280.128.

(4) *Loss resulting from transfer.* If a loss should occur upon consummation of a complete transfer and assumption for less than the full amount of the debt and the transferor (including personal guarantors) is released from liability, the lender, if it holds the guaranteed portion, may file Form RD 449–30, ''Loan Note Guaranteed Loss of Report,'' to recover its pro rata share of the actual loss. If a holder owns any of the guaranteed portion, such portion must be repurchased by the lender or the Agency in accordance with § 4279.78(c) of this chapter. In completing the report of loss, the amount of the debt assumed will be entered as net collateral (recovery). Approved protective advances and accrued interest thereon made during the arrangement of a transfer and assumption will be included in the calculations.

§ 4280.153 Substitution of lender.

(a) All substitutions of lenders must comply with § 4287.135(a)(2) and (b) of this chapter and paragraph (b) of this section.

(b) The Agency may approve the substitution of a new lender if the proposed substitute lender:

(1) Is an eligible lender in accordance with § 4280.130;

(2) Is able to service the loan in accordance with the original loan documents; and

(3) Acquires title to the unguaranteed portion of the loan held by the original lender and assumes all original loan requirements, including liabilities and servicing responsibilities.

§ 4280.154 Default by borrower.

If the loan goes into default, the lender must comply with § 4287.145 of this chapter.

§ 4280.155 Protective advances.

All protective advances made by the lender must comply with § 4287.156 of this chapter.

§ 4280.156 Liquidation.

All liquidations must comply with § 4287.157 of this chapter, except as follows:

(a) Under § 4287.157(d)(13) of this chapter, whenever $200,000 is used substitute $100,000; and

(b) Under § 4287.157(d)(13) of this chapter, replace the sentence ''The appraisal shall consider this aspect'' with ''Both the estimate and the appraisal shall consider this aspect.''

§ 4280.157 Determination of loss and payment.

Loss and payments will be determined in accordance with § 4287.158 of this chapter.

§ 4280.158 Future recovery.

Future recoveries will be conducted in accordance with § 4287.169 of this chapter.

§ 4280.159 Bankruptcy.

Bankruptcies will be handled in accordance with § 4287.170 of this chapter, except that the notification required under § 4287.170(b)(4) of this chapter shall be made in writing.

§ 4280.160 Termination of guarantee.

Guarantees will be terminated in accordance with § 4287.180 of this chapter.

Section C. Direct Loans

§ 4280.161 Direct Loan Process.

(a) The Agency will determine each year whether or not direct loan funds are available. For each year in which direct loan funds are available, the Agency will publish a Notice of Funds Availability (NOFA) in the **Federal Register**.

(b) In each direct loan NOFA, the Agency will identify the following:

(1) The amount of funds available for direct loans;

(2) Applicant and project eligibility criteria;

(3) Minimum and maximum loan amounts;

(4) Interest rates;

(5) Terms of loan;

(6) Application and documentation requirements;

(7) Evaluation of applications;

(8) Actions required of the applicant/borrower (*e.g.*, appraisals, land and property acquisition);

(9) Insurance requirements;

(10) Laws that contain other compliance requirements;

(11) Construction planning and performing development;

(12) Requirements after project construction;

(13) Letter of Conditions, loan agreement, and loan closing process;

(14) Processing and servicing of direct loans by the Agency; and

(15) Any applicable definitions.

§ 4280.162–4280.192 [Reserved]

Section D. Combined Funding

§ 4280.193 Combined funding.

The requirements for a project for which an applicant is seeking a

combined grant and guaranteed loan are defined as follows:

(a) *Eligibility*. Applicants must meet the applicant eligibility requirements specified in § 4280.107 and the borrower eligibility requirements specified in § 4280.121. Projects must meet the project eligibility requirements specified in §§ 4280.108 and 4280.122. Applicants may submit simplified applications if the project meets the requirements specified in § 4280.109.

(b) *Funding*. Funding provided under this section is subject to the limits described in paragraphs (b)(1) through (3) of this section.

(1) The amount of any combined grant and guaranteed loan must not exceed 50 percent of total eligible project costs. For purposes of combined funding requests, total eligible project costs are based on the total costs associated with those items specified in §§ 4280.110(c) and 4280.123(e). The applicant must provide the remaining total funds needed to complete the project.

(2) Third-party, in-kind contributions will be limited to 10 percent of the matching fund requirement of any financial assistance provided to the applicant.

(3) The minimum combined funding request allowed is $5,000, with the grant portion of the funding request being at least $1,500.

(c) *Application and documentation*. When applying for combined funding, the applicant must submit separate applications for both types of assistance (grant and guaranteed loan). Each application must meet the requirements, including the requisite forms and certifications, specified in §§ 4280.111 and 4280.128. The separate applications must be submitted simultaneously. The applicant must submit at least one set of documentation, but does not need to submit duplicate forms or certifications.

(d) *Evaluation*. The Agency will evaluate each application according to applicable procedures specified in §§ 4280.112 and 4280.129.

(e) *Interest rate and terms of loan*. The interest rate and terms of the loan for the loan portion of the combined funding request will be determined based on the procedures specified in §§ 4280.124 and 4280.125 for guaranteed loans.

(f) *Other provisions*. In addition to the requirements specified in paragraphs (a) through (e) of this section, the combined funding request shall be subject to the other requirements specified in this subpart, including, but not limited to, processing and servicing requirements, as applicable, as described in paragraphs (f)(1) and (2) of this section.

(1) All other provisions of Section A of this subpart shall apply to the grant portion of the combined funding request.

(2) All other provisions of Section B of this subpart shall apply to the guaranteed loan portion of the combined funding request.

§§ 4280.194–4280.199 [Reserved]

§ 4280.200 OMB control number.

The information collection requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0570–0050. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Appendix A to Part 4280

Technical Reports for Projects With Total Eligible Project Costs of $200,000 or Less

The Technical Report for projects with total eligible project costs of $200,000 or less must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in Sections 1 through 10 of this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original technical report plus one copy to the Rural Development State Office. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed professional engineer or a team of licensed professional engineers may be required.

Section 1. Bioenergy

The technical requirements specified in this section apply to bioenergy projects, which are, as defined in § 4280.103, renewable energy systems that produce fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the type, quantity, quality, and seasonality of the biomass resource, including harvest and storage, where applicable. Where applicable, indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity of more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system;

(6) Discuss the impact of reduced or interrupted biomass availability on the system process; and

(7) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 2. Anaerobic Digester Projects

The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in § 4280.103, renewable energy systems that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of digestible substrate resource available. Indicate the source of the data and assumptions. Indicate the substrates used as digester inputs, including animal wastes, food-processing wastes, or other organic wastes in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Show the digestion conversion factors and calculations used to estimate biogas production and heat or power production.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of or the market for electricity, heat, or fuel produced by the system; and

(6) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 3. Geothermal, Electric Generation

The technical requirements specified in this section apply to electric generation geothermal projects, which are, as defined in § 4280.103, systems that use geothermal energy to produce high pressure steam for electric power production.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credential for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on

Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of or the market for electricity, heat, or fuel produced by the system; and

(6) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 4. Geothermal, Direct Use

The technical requirements specified in this section apply to direct use geothermal projects, which are, as defined in § 4280.103, systems that use thermal energy directly from a geothermal source.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(2) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate evidence of the availability of the renewable resource required for the system to operate as designed. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system;

(5) Describe the expected thermal energy production of the proposed system as rated and as expected in actual field conditions. Describe the uses of, or the market for, heat produced by the system; and

(6) Describe the project site and address issues such as proximity to the load, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling

and disposing of project components and associated wastes at the end of their useful lives.

Section 5. Hydrogen

The technical requirements specified in this section apply to hydrogen projects, which are, as defined in § 4280.103, renewable energy systems that produce hydrogen, or a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the type, quantity, quality, and seasonality of the local renewable resource that will be used to produce the hydrogen.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 6. Solar, Small

The technical requirements specified in this section apply to small solar electric projects and small solar thermal projects, as defined in § 4280.103.

Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller, or which have a collector area of 1,000 square feet or less.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of solar resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate that the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building

and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 7. Solar, Large

The technical requirements specified in this section apply to large solar electric projects and large solar thermal projects, as defined in § 4280.103.

Large solar electric systems are those for which the rated power of the system is larger than 10kW. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credential for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of solar resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 8. Wind, Small

The technical requirements specified in this section apply to small wind systems, which are, as defined in § 4280.103, wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 feet or less. Small wind systems are either stand-alone or connected to the local electrical system at less than 600 volts.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of local wind resource where the small wind turbine is to be installed. Indicate the source of the wind data and assumptions.

(d) *Design and engineering.* Applicants must certify that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide a one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 9. Wind, Large

The technical requirements specified in this section apply to large wind systems, which are, as defined in § 4280.103, wind energy projects for which the rated power of the individual wind turbine(s) is larger than 100kW.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional.

(b) *Agreements, permits, and certifications.*

(1) Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits.

(2) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(3) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of local wind resource where the large wind turbine is to be installed. Indicate the source of the wind data and assumptions. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least 1 year of on-site monitoring. If less than 1 year of data is used, the qualified meteorological consultant must provide a detailed analysis of correlation between the site data and a nearby long-term measurement site.

(d) *Design and engineering.* Applicants must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, applicants must:

(1) Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose;

(2) List possible suppliers and models of major pieces of equipment;

(3) Provide a description of the components, materials, or systems to be installed. Include the location of the project;

(4) Provide one-line diagram for the electrical interconnection. Provide diagrams or schematics as required showing all major installed structural, mechanical, and electrical components of the system; and

(5) Describe the project site and address issues such as proximity to the load or the electrical grid, unique safety concerns, and whether special circumstances exist.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed and be able to identify impacts of any delays on the project completion. The applicant must submit a statement certifying that the project will be completed within 3 years from the date of approval.

(f) *Project economic assessment.* Provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the system to operate as designed over the design life. State the design life of the system.

(1) Provide information on all system warranties. A minimum 3-year warranty for equipment and a 10-year warranty on design are expected.

(2) If the project has any unique operation and maintenance issues, describe them.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives.

Section 10. Energy Efficiency Improvements

The technical requirements specified in this section apply to energy efficiency improvement projects, which are, as defined in § 4280.103, improvements to a facility, building, or process that reduces energy consumption.

(a) *Qualifications of key project service providers.* List all key project service providers. If one or more licensed professionals are involved in the project, provide the credentials for each professional. For projects with total eligible project costs greater than $50,000, also discuss the qualifications of the energy auditor, including any relevant certifications by recognized organizations or bodies.

(b) *Agreements, permits, and certifications.*

(1) The applicant must certify that they will comply with all necessary agreements and permits required for the project. Indicate the status and schedule for securing those agreements and permits.

(2) Identify all environmental issues, including any compliance issues associated with or expected as a result of the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(c) *Energy assessment.*

(1) For all energy efficiency improvement projects, provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(2) For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit must be conducted. An energy audit is a written report by an independent, qualified party that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback period in years (total costs divided by annual dollars of energy savings). The methodology of the energy audit must meet professional and industry standards. The energy audit must cover the following:

(i) *Situation report.* Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.,) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

(ii) *Potential improvements.* List specific information on all potential energy-saving opportunities and their costs.

(iii) *Technical analysis.* Discuss the interactions among the potential improvements and other energy systems.

(A) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project.

(B) Calculate all direct and attendant indirect costs of each improvement.

(C) Rank potential improvement measures by cost-effectiveness.

(iv) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of nonenergy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs.

(E) Describe explicitly how outcomes will be measured.

(d) *Design and engineering.* The applicant must submit a statement certifying that their project will be designed and engineered so as to meet the intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) Identify possible suppliers and models of major pieces of equipment.

(2) Describe the components, materials, or systems to be installed. Include the location of the project.

(e) *Project development schedule.* Provide a project schedule in an appropriate level of detail that will demonstrate the project can be adequately managed. The applicant must submit a statement certifying that the project will be completed within 2 years from the date of approval.

(f) *Project economic assessment.* For projects with total eligible project costs greater than $50,000, provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* The project must be installed in accordance with applicable local, State, and national building and electrical codes and regulations. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules. Upon successful system installation and following established operation, the successful applicant must deliver invoices and evidence of payment.

(i) *Operations and maintenance.* Identify any unique operations and maintenance requirements of the project necessary for the improvement(s) to perform as designed over the design life. State the design life of the improvement(s). Provide information regarding component warranties.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and proper disposal of the project components and associated wastes at the end of their useful lives.

Appendix B to Part 4280

Technical Reports for Projects With Total Eligible Project Costs Greater Than $200,000

The Technical Report for projects with total eligible project costs greater than $200,000 (and for any other project that must submit a Technical Report under this appendix) must demonstrate that the project design, procurement, installation, startup, operation, and maintenance of the renewable energy system or energy efficiency improvement will operate or perform as specified over its design life in a reliable and a cost-effective manner. The Technical Report must also identify all necessary project agreements, demonstrate that those agreements will be in place, and that necessary project equipment and services are available over the design life.

All technical information provided must follow the format specified in Sections 1 through 10 of this appendix. Supporting information may be submitted in other formats. Design drawings and process flowcharts are encouraged as exhibits. A discussion of each topic is not necessary if the topic is not applicable to the specific project. Questions identified in the Agency's technical review of the project must be answered to the Agency's satisfaction before the application will be approved. The applicant must submit the original technical report plus one copy to the Rural Development State Office. Renewable energy projects with total eligible project costs greater than $400,000 and for energy efficiency improvement projects with total eligible project costs greater than $200,000 require the services of a licensed professional engineer (PE) or team of PEs. Depending on the level of engineering required for the specific project or if necessary to ensure public safety, the services of a licensed PE or a team of licensed PEs may be required for smaller projects.

Section 1. Bioenergy

The technical requirements specified in this section apply to bioenergy projects, which are, as defined in § 4280.103, renewable energy systems that produce fuel, thermal energy, or electric power from a biomass source, other than an anaerobic digester project.

(a) *Qualifications of project team.* The bioenergy project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar bioenergy systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the bioenergy system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing bioenergy systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining bioenergy renewable energy equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selections, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the bioenergy project, including location of the project, resource characteristics, system specifications, electric power system interconnection, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system as rated and as expected in actual field conditions. For systems with a capacity of more than 20 tons per day of biomass, address performance on a monthly and annual basis. For small projects such as a commercial biomass furnace or pelletizer of up to 5 tons daily capacity, proven, commercially available devices need not be addressed in detail. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted biomass availability on the system process.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat fragmentation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Bioenergy systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Fully describe the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. In addition:

(1) Provide information regarding available system and component warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedule for the mechanical, piping, and electrical systems and system monitoring and control requirements. Provide information that supports expected design life of the system and timing of major component replacement or rebuilds. Discuss the costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing. Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(3) For systems having a biomass input capacity exceeding 10 tons of biomass per day, provide and discuss the risk management plan for handling large, potential failures of major components.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 2. Anaerobic Digester Projects

The technical requirements specified in this section apply to anaerobic digester projects, which are, as defined in § 4280.103, renewable energy systems that use animal waste and other organic substrates to produce thermal or electrical energy via anaerobic digestion.

(a) *Qualifications of project team.* The anaerobic digester project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator or maintainer. One individual or entity may serve more than one role. The project team must have demonstrated commercial-scale expertise in anaerobic digester systems development, engineering, installation, and maintenance as related to the organic materials and operating mode of the system. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the

project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the anaerobic digester system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing anaerobic digester systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material with references, if available; and

(4) For regional or centralized digester plants, describe the system operator's qualifications and experience for servicing, operating, and maintaining similar projects. Farm scale systems may not require operator experience as the developer is typically required to provide operational training during system startup and shakedown. Provide a list of the same or similar projects designed, installed, or supplied and currently operating consistent with the substrate material with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) For regional or centralized digester plants, identify feedstock access agreements required for the project and the anticipated schedule for securing those agreements and the term of those agreements.

(4) Identify any permits or agreements required for transport and ultimate waste disposal and the schedule for securing those agreements and permits.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates used as digester inputs, including animal wastes, food processing wastes, or other organic wastes in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, digester component selection, gas handling component selection, and gas use component selection. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the anaerobic digester project, including location of the project, farm description, feedstock characteristics, a step-by-step flowchart of unit operations, electric power system interconnection equipment, and any required monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production, heat balances, and material balances as part of the unit operations flowchart.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and environmental concerns with emphasis on land use, air quality, water quality, soil degradation, habitat degradation, land use, visibility, odor, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including feedstock assessment, system and site designs, permits and agreements, equipment procurement, system installation from excavation through startup and shakedown, and operator training.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, feedstock assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, training and operations, and maintenance costs of both the digester and the gas use systems. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Anaerobic digester systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment and a 10-year warranty on design. Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the digester, the gas handling equipment, and the gas use systems. Describe any maintenance requirements for system monitoring and control equipment;

(3) Provide information that supports the expected design life of the system and the timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and

maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 3. Geothermal, Electric Generation

The technical requirements specified in this section apply to electric generation geothermal projects, which are, as defined in § 4280.103, systems that use geothermal energy to produce high pressure steam for electric power production.

(a) *Qualifications of project team.* The electric generating geothermal plant project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal electric generation systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the geothermal plant equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing geothermal electric generation systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining electric generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (7).

(1) Identify zoning and code issues and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the schedule for securing those agreements and permits.

(3) Identify land use or access to the resource agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify available component warranties for the specific project location and size.

(5) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(6) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(7) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, conversion system component and selection, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the geothermal project, including location of the project, resource characteristics, thermal system specifications, electric power system interconnection equipment and project monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup or shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance

requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 4. Geothermal, Direct Use

The technical requirements specified in this section apply to direct use geothermal projects, which are, as defined in § 4280.103, systems that use thermal energy directly from a geothermal source.

(a) *Qualifications of project team.* The geothermal project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in geothermal heating systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the geothermal system equipment manufacturers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing direct use geothermal systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe system operator's qualifications and experience for servicing, operating, and maintaining direct use generating geothermal projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (7).

(1) Identify zoning and code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use or access to the resource agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for well construction and for disposal or re-injection of cooled geothermal waters and the anticipated schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(7) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, thermal system component selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the geothermal project, including location of the project, resource characteristics, thermal system specifications, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production on a monthly and annual basis.

(2) Describe the project site and address issues such as site access, thermal backup equipment, environmental concerns with emphasis on land use, air quality, water quality, habitat fragmentation, visibility, noise, construction, and installation issues. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Geothermal systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation,

provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedownspecifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 5. Hydrogen Projects

The technical requirements specified in this section apply to hydrogen projects, which are, as defined in § 4280.103, renewable energy systems that produce hydrogen or, a renewable energy system that uses mechanical or electric power or thermal energy from a renewable resource using hydrogen as an energy transport medium.

(a) *Qualifications of project team.* The hydrogen project team will vary according to the complexity and scale of the project. For engineered systems, the project team should consist of a system designer, a project manager, an equipment supplier, a project engineer, a construction contractor or system installer, and a system operator and maintainer. One individual or entity may serve more than one role. The project team must have demonstrated expertise in similar hydrogen systems development, engineering, installation, and maintenance. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the hydrogen system equipment manufacturers of major components for the hydrogen system being considered in terms of the length of time in the business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, system designer, project engineer, and construction contractor qualifications for engineering, designing, and installing hydrogen systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining hydrogen system equipment or projects. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (8).

(1) Identify zoning and building code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify licenses where required and the schedule for obtaining those licenses.

(3) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(4) Identify any permits or agreements required for solid, liquid, and gaseous emissions or effluents and the anticipated schedule for securing those permits and agreements.

(5) Identify available component warranties for the specific project location and size.

(6) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(7) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(8) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the local renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Projects shall be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components. The engineering must be comprehensive, including site selection, system and component selection, and system monitoring equipment. Systems must be constructed by a qualified party.

(1) Provide a concise but complete description of the hydrogen project, including location of the project, resource characteristics, system specifications, electric power system interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Describe the expected electric power, fuel production, or thermal energy production of the proposed system. Address performance on a monthly and annual basis. Describe the uses of or the market for electricity, heat, or fuel produced by the system. Discuss the impact of reduced or interrupted resource availability on the system process.

(2) Describe the project site and address issues such as site access, foundations, backup equipment when applicable, and any environmental and safety concerns with emphasis on land use, air quality, water quality, and safety hazards. Identify any unique construction and installation issues.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design and

engineering, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed analysis and description of annual project revenues and expenses. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Hydrogen systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues, such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, and receiving, and on-site storage or inventory. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Provide information regarding system warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance of the reformer, electrolyzer, or fuel cell as appropriate, and other mechanical, piping, and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 6. Solar, Small

The technical requirements specified in this section apply to small solar electric projects and small solar thermal projects, as defined in § 4280.103.

Small solar electric projects are those for which the rated power of the system is 10kW or smaller. Small solar electric projects are either stand-alone (off grid) or interconnected to the grid at less than 600 volts (on grid).

Small solar thermal projects are those for which the rated storage volume of the system is 240 gallons or smaller, or which have a collector area of 1,000 square feet or less.

(a) *Qualifications of project team.* The small solar project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the qualifications of the suppliers of major components being considered;

(2) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(3) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small solar systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed or installed by the design and installation team and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. For small solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects and interconnection equipment. For small solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection.

(1) Provide a concise but complete description of the small solar system, including location of the project and proposed equipment specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(2) Describe the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns such as water quality and land use, unique safety concerns such as hazardous materials handling, construction, and installation issues, and whether special circumstances exist.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of

project costs, including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical and electrical and software systems;

(3) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(4) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes. Describe any environmental compliance requirements such as proper disposal or recycling procedures to reduce potential impact from any hazardous chemicals.

Section 7. Solar, Large

The technical requirements specified in this section apply to large solar electric projects and large solar thermal projects, as defined in § 4280.103.

Large solar electric systems are those for which the rated power of the system is larger than 10kW. Large solar electric systems are either stand-alone (off grid) or interconnected to the grid (on grid).

Large solar thermal systems are those for which the rated storage volume of the system is greater than 240 gallons or that have a collector area of more than 1,000 square feet.

(a) *Qualifications of project team.* The large solar project team should consist of an equipment supplier of major components, a project manager, general contractor, system engineer, system installer, and system maintainer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developer's risk;

(2) Discuss the qualifications of the suppliers of major components being considered;

(3) Discuss the project manager, general contractor, system engineer, and system installer qualifications for engineering, designing, and installing large solar systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating with references, if available; and

(4) Describe the system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar systems designed or installed by the design, engineering, and installation team and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) For large solar electric systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, power conditioning design and selection, surface or submersible water pumps and energy storage requirements as applicable, and selection of cabling, disconnects, and interconnection equipment. A complete set of engineering drawings, stamped by a professional engineer, must be provided.

(2) For large solar thermal systems, the engineering must be comprehensive, including solar collector design and selection, support structure design and selection, pump and piping design and selection, and energy storage design and selection. Provide a complete set of engineering drawings stamped by a professional engineer.

(3) For either type of system, provide a concise but complete description of the large solar system, including location of the project and proposed equipment and system specifications. Identify possible vendors and models of major system components. Provide the expected system energy production based on available solar resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(4) For either type of system, provide a description of the project site and address issues such as solar access, orientation, proximity to the load or the electrical grid, environmental concerns such as land use, water quality, habitat fragmentation, and aesthetics, unique safety concerns, construction, and installation issues, and whether special circumstances exist.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design and engineering, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large solar systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical, electrical, and software systems;

(3) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance; and

(4) Provide information regarding expected system design life and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes. Describe any environmental compliance requirements such as proper disposal or recycling procedures to reduce any potential impact from hazardous chemicals.

Section 8. Wind, Small

The technical requirements specified in this section apply to small wind systems, which are, as defined in § 4280.103, wind energy systems for which the rated power of the wind turbine is 100kW or smaller and with a generator hub height of 120 ft or less. Small wind systems are either stand-alone or connected to the local electrical system at less than 600 volts.

(a) *Qualifications of project team.* The small wind project team should consist of a system designer, a project manager or general contractor, an equipment supplier of major components, a system installer, a system maintainer, and, in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the small wind turbine manufacturers and other equipment suppliers of major components being considered in terms of their length of time in business and the number of units installed at the capacity and scale being considered;

(2) Describe the knowledge, skills, and abilities needed to service, operate, and maintain the system for the proposed application; and

(3) Discuss the project manager, system designer, and system installer qualifications for engineering, designing, and installing small wind systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar systems designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (5).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses, where required, and the anticipated schedule for meeting those requirements and obtaining those agreements. This is required even if the system is installed on the customer side of the utility meter. For systems planning to utilize a local net metering program as their interconnection agreement, describe the applicable local net metering program.

(4) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(5) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Small wind systems must be engineered by either the wind turbine manufacturer or other qualified party. Systems must be offered as a complete, integrated system with matched components. The engineering must be comprehensive, including turbine design and selection, tower design and selection, specification of guy wire anchors and tower foundation, inverter/controller design and selection, energy storage requirements as applicable, and selection of cabling, disconnects, and interconnection equipment, as well as the engineering data needed to match the wind system output to the application load, if applicable.

(1) Provide a concise but complete description of the small wind system, including location of the project, proposed turbine specifications, tower height and type of tower, type of energy storage and location of storage if applicable, proposed inverter

manufacturer and model, electric power system interconnection equipment, and application load and load interconnection equipment as applicable. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on a monthly (when possible) and annual basis and how the energy produced by the system will be used.

(2) Describe the project site and address issues such as access to the wind resource, proximity to the electrical grid or application load, environmental concerns with emphasis on historic properties, visibility, noise, bird and bat populations, and wildlife habitat destruction and/or fragmentation, construction, and installation issues and whether special circumstances such as proximity to airports exist. Provide a 360-degree panoramic photograph of the proposed site, including indication of prevailing winds when possible.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the project, including the calculation of simple payback. Provide a detailed analysis and description of project costs, including design, permitting, equipment, site preparation, system installation, system startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed description of historic or expected energy use and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Small wind systems may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes and other devices needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 5-year warranty for equipment and a commitment from the supplier to have spare parts available. Provide information regarding system warranty and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed system, including maintenance schedules for the mechanical, electrical, and software systems;

(3) Provide historical or engineering information that supports expected design life of the system and timing of major component replacement or rebuilds. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing; and

(4) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 9. Wind, Large

The technical requirements specified in this section apply to wind energy systems, which are, as defined in § 4280.103, wind energy projects for which the rated power of the individual wind turbine(s) is larger than 100kW.

(a) *Qualifications of project team.* The large wind project team should consist of a project manager, a meteorologist, an equipment supplier, a project engineer, a primary or general contractor, construction contractor, and a system operator and maintainer, and in some cases, the owner of the application or load served by the system. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the proposed project delivery method. Such methods include a design, bid, build where a separate engineering firm may design the project and prepare a request for bids and the successful bidder constructs the project at the applicant's risk, and a design/build method, often referred to as turnkey, where the applicant establishes the specifications for the project and secures the services of a developer who will design and build the project at the developers risk;

(2) Discuss the large wind turbine manufacturers and other equipment suppliers of major components being considered in terms of the length of time in business and the number of units installed at the capacity and scale being considered;

(3) Discuss the project manager, equipment supplier, project engineer, and construction contractor qualifications for engineering, designing, and installing large wind systems, including any relevant certifications by recognized organizations. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available;

(4) Discuss the qualifications of the meteorologist, including references; and

(5) Describe system operator's qualifications and experience for servicing, operating, and maintaining the system for the proposed application. Provide a list of the same or similar projects designed, installed, or supplied and currently operating with references, if available.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the project and the status and schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (6).

(1) Identify zoning, building, and electrical code issues, and required permits and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify land use agreements required for the project and the anticipated schedule for securing the agreements and the term of those agreements.

(3) Identify available component warranties for the specific project location and size.

(4) For systems planning to interconnect with a utility, describe the utility's system interconnection requirements, power purchase arrangements, or licenses where required and the anticipated schedule for meeting those requirements and obtaining those agreements.

(5) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(6) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Resource assessment.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Projects greater than 500kW must obtain wind data from the proposed project site. For such projects, describe the proposed measurement setup for the collection of the wind resource data. For proposed projects with an established wind resource, provide a

summary of the wind resource and the specifications of the measurement setup. Large wind systems larger than 500kW in size will typically require at least 1 year of on-site monitoring. If less than 1 year of data is used, the qualified meteorological consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(d) *Design and engineering.* Provide authoritative evidence that the system will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards. Large wind systems must be engineered by a qualified party. Systems must be engineered as complete, integrated systems with matched components. The engineering must be comprehensive, including site selection, turbine selection, tower selection, tower foundation, design of the local collection grid, interconnection equipment selection, and system monitoring equipment. For stand-alone, non-grid applications, engineering information must be provided that demonstrates appropriate matching of wind turbine and load.

(1) Provide a concise, but complete, description of the large wind project, including location of the project, proposed turbine specifications, tower height and type of tower, the collection grid, interconnection equipment, and monitoring equipment. Identify possible vendors and models of major system components. Provide the expected system energy production based on available wind resource data on a monthly and annual basis. For wind projects larger than 500kW in size, provide the expected system energy production over the life of the project, including a discussion on inter-annual variation using a comparison of the on-site monitoring data with long-term meteorological data from a nearby monitored site.

(2) Describe the project site and address issues such as site access, proximity to the electrical grid or application load, environmental concerns with emphasis on historic properties, visibility, noise, bird and bat populations, and wildlife habitat destruction and/or fragmentation, construction, and installation issues and whether special circumstances such as proximity to airports exist.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including resource assessment, system and site design, permits and agreements, equipment procurement, and system installation from excavation through startup and shakedown.

(f) *Project economic assessment.* Provide a study that describes the costs and revenues of the proposed project to demonstrate the financial performance of the proposed project. Provide a detailed analysis and description of project costs, including project management, resource assessment, project design, project permitting, land agreements, equipment, site preparation, system installation, startup and shakedown, warranties, insurance, financing, professional services, and operations and maintenance costs. Provide a detailed description of applicable investment incentives, productivity incentives, loans, and grants. Provide a detailed analysis and description of annual project revenues, including electricity sales, production tax credits, revenues from green tags, and any other production incentive programs throughout the life of the project. Provide a description of planned contingency fees or reserve funds to be used for unexpected large component replacement or repairs and for low productivity periods. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required by the system is available and can be procured and delivered within the proposed project development schedule. Large wind turbines may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for site development and system installation, provide details regarding the scheduling of major installation equipment, including cranes or other devices, needed for project construction, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the system necessary for the system to operate as designed over the design life. The application must:

(1) Ensure that systems must have at least a 3-year warranty for equipment. Provide information regarding turbine warranties and availability of spare parts;

(2) Describe the routine operations and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the system and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components such as the turbine gearbox or rotor. Include in the discussion, costs and labor associated with the operation and maintenance of the system, and plans for in-sourcing or out-sourcing;

(5) Describe opportunities for technology transfer for long-term project operations and maintenance by a local entity or owner/operator; and

(6) For owner maintained portions of the system, describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Section 10. Energy Efficiency Improvements

The technical requirements specified in this section apply to projects that involve energy efficiency improvements, which are, as defined in § 4280.103, improvements to a facility, building, or process that reduces energy consumption. The system engineering for such projects must be performed by a qualified party or certified Professional Engineer.

(a) *Qualifications of project team.* The energy efficiency project team is expected to consist of an energy auditor or other service provider, a project manager, an equipment supplier of major components, a project engineer, and a construction contractor or system installer. One individual or entity may serve more than one role. Authoritative evidence that project team service providers have the necessary professional credentials or relevant experience to perform the required services must be provided. Authoritative evidence that vendors of proprietary components can provide necessary equipment and spare parts for the system to operate over its design life must also be provided. The application must:

(1) Discuss the qualifications of the various project team members, including any relevant certifications by recognized organizations;

(2) Describe qualifications or experience of the team as related to installation, service, operation and maintenance of the project;

(3) Provide a list of the same or similarly engineered projects designed, installed, or supplied by the team or by team members and currently operating. Provide references if available; and

(4) Discuss the manufacturers of major energy efficiency equipment being considered, including length of time in business.

(b) *Agreements, permits, and certifications.* Identify all necessary agreements and permits required for the energy efficiency improvement(s) and the status and anticipated schedule for securing those agreements and permits, including the items specified in paragraphs (b)(1) through (4). The applicant must also submit a statement certifying that the applicant will comply with all necessary agreements and permits for the energy efficiency improvement(s).

(1) Identify building code, electrical code, and zoning issues and required permits, and the anticipated schedule for meeting those requirements and securing those permits.

(2) Identify available component warranties for the specific project location and size.

(3) Identify all environmental issues, including environmental compliance issues, associated with the project on Form RD 1940–20, ''Request for Environmental Information,'' and in compliance with 7 CFR part 1940, subpart G, of this title.

(4) Submit a statement certifying that the project will be installed in accordance with applicable local, State, and national codes and regulations.

(c) *Energy assessment.* Provide adequate and appropriate evidence of energy savings expected when the system is operated as designed.

(1) Provide information on baseline energy usage (preferably including energy bills for at least 1 year), expected energy savings based on manufacturers specifications or other estimates, estimated dollars saved per year, and payback period in years (total investment cost equal to cumulative total dollars of energy savings). Calculation of energy savings should follow accepted methodology and practices. System interactions should be considered and discussed.

(2) For energy efficiency improvement projects with total eligible project costs greater than $50,000, an energy audit is required. An energy audit is a written report by an independent, qualified party that documents current energy usage, recommended potential improvements and their costs, energy savings from these improvements, dollars saved per year, and simple payback period in years (total costs divided by annual dollars of energy savings). The methodology of the energy audit must meet professional and industry standards. The energy audit must cover the following:

(i) *Situation report.* Provide a narrative description of the facility or process, its energy system(s) and usage, and activity profile. Also include price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.,) paid by the customer on the date of the audit. Any energy conversion should be based on use rather than source.

(ii) *Potential improvements.* List specific information on all potential energy-saving opportunities and their costs.

(iii) *Technical analysis.* Give consideration to the interactions among the potential improvements and other energy systems:

(A) Estimate the annual energy and energy costs savings expected from each improvement identified in the potential project;

(B) Calculate all direct and attendant indirect costs of each improvement; and

(C) Rank potential improvements measures by cost-effectiveness.

(iv) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of nonenergy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs.

(E) Describe explicitly how outcomes will be measured.

(3) For energy efficiency improvement projects with total eligible project costs equal to or less than $50,000, an energy assessment or energy audit is required. If an energy assessment is performed, provide adequate and appropriate evidence of energy savings expected when the system is operated as designed. If an energy audit is performed, it must follow the requirements specified in paragraph (c)(2).

(d) *Design and engineering.* Provide authoritative evidence that the energy efficiency improvement(s) will be designed and engineered so as to meet its intended purpose, will ensure public safety, and will comply with applicable laws, regulations, agreements, permits, codes, and standards.

(1) Energy efficiency improvement projects in excess of $50,000 must be engineered by a qualified party. Systems must be engineered as a complete, integrated system with matched components.

(2) For all energy efficiency improvement projects, identify and itemize major energy efficiency improvements, including associated project costs. Specifically delineate which costs of the project are directly associated with energy efficiency improvements. Describe the components, materials or systems to be installed and how they improve the energy efficiency of the process or facility being modified. Discuss passive improvements that reduce energy loads, such as improving the thermal efficiency of a storage facility, and active improvements that directly reduce energy consumption, such as replacing existing energy consuming equipment with high efficiency equipment, as separate topics. Discuss any anticipated synergy between active and passive improvements or other energy systems. Include in the discussion any change in on-site effluents, pollutants, or other by-products.

(3) Identify possible suppliers and models of major pieces of equipment.

(e) *Project development schedule.* Identify each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through startup and shakedown. Provide a detailed description of the project timeline, including energy audit (if applicable), system and site design, permits and agreements, equipment procurement, and system installation from site preparation through startup and shakedown.

(f) *Project economic assessment.* For projects whose total eligible costs are greater than $50,000, provide an analysis of the proposed project to demonstrate its financial performance, including the calculation of simple payback. The analysis should include applicable investment incentives, productivity incentives, loans and grants, and expected energy offsets or sales on a monthly and annual basis. In addition, provide other information necessary to assess the project's cost effectiveness.

(g) *Equipment procurement.* Demonstrate that equipment required for the energy efficiency improvement(s) is available and can be procured and delivered within the proposed project development schedule. Energy efficiency improvements may be constructed of components manufactured in more than one location. Provide a description of any unique equipment procurement issues such as scheduling and timing of component manufacture and delivery, ordering, warranties, shipping, receiving, and on-site storage or inventory. Provide a detailed description of equipment certification. Identify all the major equipment that is proprietary and justify how this unique equipment is needed to meet the requirements of the proposed design. Include a statement from the applicant certifying that ''open and free'' competition will be used for the procurement of project components in a manner consistent with the requirements of 7 CFR part 3015 of this title.

(h) *Equipment installation.* Describe fully the management of and plan for installation of the energy efficiency improvement(s), identify specific issues associated with installation, provide details regarding the scheduling of major installation equipment needed for project discussion, and provide a description of the startup and shakedown specifications and process and the conditions required for startup and shakedown for each equipment item individually and for the system as a whole. Include in this discussion any unique concerns, such as the effects of energy efficiency improvements on system power quality. Include a statement from the applicant certifying that equipment installation will be made in accordance with all applicable safety and work rules.

(i) *Operations and maintenance.* Identify the operations and maintenance requirements of the energy efficiency improvement(s) necessary for the energy efficiency improvement(s) to perform as designed over the design life. The application must:

(1) Provide information regarding component warranties and the availability of spare parts;

(2) Describe the routine operation and maintenance requirements of the proposed project, including maintenance schedules for the mechanical and electrical systems and system monitoring and control requirements;

(3) Provide information that supports expected design life of the improvement(s) and timing of major component replacement or rebuilds;

(4) Provide and discuss the risk management plan for handling large, potential failures of major components. Include in the discussion, costs and labor associated with the operation and maintenance of the improvement(s), and plans for in-sourcing or out-sourcing; and

(5) For owner maintained portions of the improvement(s), describe any unique knowledge, skills, or abilities needed for service operations or maintenance.

(j) *Dismantling and disposal of project components.* Describe a plan for dismantling and disposing of project components and associated wastes at the end of their useful lives. Describe the budget for and any unique concerns associated with the dismantling and disposal of project components and their wastes.

Dated: July 6, 2005.

Gilbert G. Gonzalez, Jr.,

Acting Under Secretary, Rural Development.

[FR Doc. 05–13685 Filed 7–15–05; 8:45 am]

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Federal Register

Monday,
July 18, 2005

Part III

Department of Labor

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

Performance of Functions; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended; Final Rule

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 1 and 30

RIN 1215–AB51

Performance of Functions; Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Interim final rule; compliance with information collection requirements.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is announcing that a revision of a currently approved collection of information has been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995, for the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended. This notice announces both the OMB approval number and expiration date for this collection of information.

DATES: *Effective Date:* The interim final rule published at 70 FR 33590 continues to be effective as of June 8, 2005.

Compliance Date: As of July 18, 2005, affected parties must comply with the new information collection requirements in §§ 30.102, 30.231, 30.232, 30.806, 30.905 and 30.907 of the interim final rule, which have been approved as a revision of a currently approved collection by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 8, 2005, OWCP published an interim final rule governing its administration of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (EEOICPA), 42 U.S.C. 7384 *et seq.*, and requested OMB approval under the PRA of a revision of a currently approved collection for the EEOICPA. The new information collection requirements that needed OMB approval are found in §§ 30.102, 30.231, 30.232, 30.806, 30.905 and 30.907 of the interim final rule.

On June 20, 2005, OMB approved the requested revision to a currently approved collection for the EEOICPA. This particular collection now consists of the following forms/reporting requirements: EE–1, Claim for Benefits Under the Energy Employees Occupational Illness Compensation Program Act; EE–2, Claim for Survivor Benefits Under the Energy Employees Occupational Illness Compensation Program Act; EE–3, Employment History for a Claim Under the Energy Employees Occupational Illness Compensation Program Act; EE–4, Employment History Affidavit for a Claim Under the Energy Employees Occupational Illness Compensation Program Act; EE–7, Medical Requirements Under the Energy Employees Occupational Illness Compensation Program Act; EE–8, letter to claimant requesting information for lung cancer claim; EE–9, letter to claimant requesting information for skin cancer claim; EE–10, Claim for Additional Wage-Loss and/or Impairment Under the Energy Employees Occupational Illness Compensation Program Act; EE–20, letter requesting information needed to pay benefits on an accepted claim; 20 CFR 30.106, employment information requested from an alternate source; 20 CFR 30.112, supplemental employment evidence required when an alleged employment history cannot be verified; 20 CFR 30.207, 30.215, 30.222, 30.226 and 30.232(c), supplemental medical evidence required to establish that an injury, illness or disability was sustained as a consequence of either an occupational illness under Part B of EEOICPA or a covered illness under Part E of EEOICPA; 20 CFR 30.806, alternate evidence of wage-loss; and 20 CFR 30.905 and 30.907, medical evidence required to establish compensable permanent impairment.

The control number assigned to this information collection by OMB is 1215–0197. The approval for this information collection will expire on August 31, 2007.

Signed at Washington, DC, this 11th day of July, 2005.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration.

[FR Doc. 05–14020 Filed 7–15–05; 8:45 am]

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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.

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- Lump-sum payments and medical benefits payments to covered DOE employees, their survivors, certain vendors, contractors and subcontractors,
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- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

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- Conservation Security Program; comments due by 7-25-05; published 3-25-05 [FR 05-05894]

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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/public_laws/public_laws.html*.

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H.R. 120/P.L. 109–22
To designate the facility of the United States Postal Service located at 30777 Rancho California Road in Temecula, California, as the "Dalip Singh Saund Post Office Building". (July 12, 2005; 119 Stat. 365)

H.R. 289/P.L. 109–23
To designate the facility of the United States Postal Service located at 8200 South Vermont Avenue in Los Angeles, California, as the "Sergeant First Class John Marshall Post Office Building". (July 12, 2005; 119 Stat. 366)

H.R. 324/P.L. 109–24
To designate the facility of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the "Arthur Stacey Mastrapa Post Office Building". (July 12, 2005; 119 Stat. 367)

H.R. 504/P.L. 109–25
To designate the facility of the United States Postal Service located at 4960 West Washington Boulevard in Los Angeles, California, as the "Ray Charles Post Office Building". (July 12, 2005; 119 Stat. 368)

H.R. 627/P.L. 109–26
To designate the facility of the United States Postal Service located at 40 Putnam Avenue in Hamden, Connecticut, as the "Linda White-Epps Post Office". (July 12, 2005; 119 Stat. 369)

H.R. 1072/P.L. 109–27
To designate the facility of the United States Postal Service located at 151 West End Street in Goliad, Texas, as the "Judge Emilio Vargas Post Office Building". (July 12, 2005; 119 Stat. 370)

H.R. 1082/P.L. 109–28
To designate the facility of the United States Postal Service located at 120 East Illinois Avenue in Vinita, Oklahoma, as the "Francis C. Goodpaster Post Office Building". (July 12, 2005; 119 Stat. 371)

H.R. 1236/P.L. 109–29
To designate the facility of the United States Postal Service located at 750 4th Street in Sparks, Nevada, as the "Mayor Tony Armstrong Memorial Post Office". (July 12, 2005; 119 Stat. 372)

H.R. 1460/P.L. 109–30
To designate the facility of the United States Postal Service located at 6200 Rolling Road in Springfield, Virginia, as the "Captain Mark Stubenhofer Post Office Building". (July 12, 2005; 119 Stat. 373)

H.R. 1524/P.L. 109–31
To designate the facility of the United States Postal Service

located at 12433 Antioch Road in Overland Park, Kansas, as the ''Ed Eilert Post Office Building''. (July 12, 2005; 119 Stat. 374)

H.R. 1542/P.L. 109–32

To designate the facility of the United States Postal Service located at 695 Pleasant Street in New Bedford, Massachusetts, as the ''Honorable Judge George N. Leighton Post Office Building''. (July 12, 2005; 119 Stat. 375)

H.R. 2326/P.L. 109–33

To designate the facility of the United States Postal Service located at 614 West Old County Road in Belhaven, North Carolina, as the ''Floyd Lupton Post Office''. (July 12, 2005; 119 Stat. 376)

S. 1282/P.L. 109–34

To amend the Communications Satellite Act of 1962 to strike the privatization criteria for INTELSAT separated entities, remove certain restrictions on separated and successor entities to INTELSAT, and for other purposes. (July 12, 2005; 119 Stat. 377)

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CFR CHECKLIST

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0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–052–00077–9)	30.00	Apr. 1, 2004
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
*40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.