



Federal Register

7-19-05

Vol. 70 No. 137

Tuesday

July 19, 2005

Pages 41341-41604



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

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** Sponsored by the Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, August 16, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008



Contents

Federal Register

Vol. 70, No. 137

Tuesday, July 19, 2005

Agency for Healthcare Research and Quality

NOTICES

Meetings:

Health Care Policy and Research Special Emphasis Panel,
41400–41401

Agriculture Department

See Forest Service

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 41369–41370

Army Department

See Engineers Corps

Centers for Disease Control and Prevention

NOTICES

Grants and cooperative agreements; availability, etc.:

Single Gene Disorders Resource Network, 41401–41406

Meetings:

Disease, Disability, and Injury Prevention and Control
Special Emphasis Panel, 41406

Coast Guard

RULES

Ports and waterways safety; regulated navigation areas,
safety zones, security zones, etc.:

Columbia Park, Kennewick, WA, 41343–41344

Portland Captain of Port Zone, OR, 41345–41346

NOTICES

Organization, functions, and authority delegations:

Ninth Coast Guard District Sector Detroit et al.;
implementation, 41413–41415

Sector St. Petersburg Commanding Officer, et al.;
establishment, 41415–41416

Commerce Department

See Economic Development Administration

See International Trade Administration

See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements

NOTICES

Textile and apparel categories:

Chinese imports; safeguard actions, 41376–41377

Customs and Border Protection Bureau

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 41416

Defense Department

See Engineers Corps

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 41377–41378

Federal Acquisition Regulation (FAR):

Agency information collection activities; proposals,
submissions, and approvals, 41378–41380

Economic Development Administration

NOTICES

Grants and cooperative agreements; availability, etc.:

National Technical Assistance; Research and Evaluation
Program, 41372–41374

Education Department

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 41382–41385

Grants and cooperative agreements; availability, etc.:

Special education and rehabilitative services—
National Assistive Technology Training and Technical
Assistance Program, 41385–41389

Election Assistance Commission

NOTICES

Meetings; Sunshine Act, 41389

Employment and Training Administration

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 41429

Organization, functions, and authority delegations:

Atlanta and Chicago National Processing Centers et al.;
application processing locations, etc., 41430–41438

Employment Standards Administration

NOTICES

Minimum wages for Federal and federally-assisted
construction; general wage determination decisions,
41438–41439

Energy Department

See Federal Energy Regulatory Commission

Engineers Corps

NOTICES

Environmental statements; notice of intent:

Los Angeles County, CA—

Newhall Ranch Specific Plan, 41380–41382

Environmental Protection Agency

PROPOSED RULES

Solid waste:

Hazardous waste; identification and listing—

Exclusions, 41358–41368

NOTICES

Agency information collection activities; proposals,
submissions, and approvals, 41398–41399

Equal Employment Opportunity Commission

NOTICES

Meetings; Sunshine Act, 41399

Executive Office of the President

See Presidential Documents

Federal Aviation Administration

PROPOSED RULES

Airworthiness directives:

Airbus, 41350–41356

Federal Emergency Management Agency**RULES**

National Flood Insurance Program:

Communities eligible for sale, 41347–41348

NOTICES

Disaster and emergency areas:

Alabama, 41417

Federal Energy Regulatory Commission**NOTICES**

Electric rate and corporate regulation combined filings, 41394–41395

Environmental statements; availability, etc.:

Appalachian Power Co., 41395–41396

S.D. Warren Co., 41396

Hydroelectric applications, 41396–41397

Meetings:

Public Service Co. of Colorado; site visits, 41397–41398

Applications, hearings, determinations, etc.:

Algonquin Gas Transmission, L.L.C., et al., 41389–41390

CenterPoint Energy Gas Transmission Co., 41390

Columbia Gas Transmission Corp., 41391

Dominion Cove Point LNG, LP, 41391

Dominion Transmission, Inc., 41392

Florida Gas Transmission Co., et al., 41392–41393

Midwestern Gas Transmission Co., 41393

Morgan Stanley Capital Group Inc., et al., 41393–41394

Williston Basin Interstate Pipeline Co., 41394

Federal Reserve System**NOTICES**

Banks and bank holding companies:

Change in bank control, 41399–41400

Change in bank control; correction, 41400

Fish and Wildlife Service**NOTICES**

Endangered and threatened species:

Higgins eye, et al.; 5-year review, 41423–41424

Endangered and threatened species permit applications, 41422–41423

Environmental statements; availability, etc.:

Incidental take permits—

Lake and Porter Counties, IN; low effect habitat conservation plan; Karner blue butterfly, 41424–41425

Food and Drug Administration**PROPOSED RULES**

Meetings:

Food labeling—

Gluten-free labeling, 41356–41358

NOTICES

Reports and guidance documents; availability, etc.:

Center for Veterinary Medicine; dispute resolution procedures, 41406–41407

Forest Service**NOTICES**

Reports and guidance documents; availability, etc.:

National Forest System lands—

Forest Service Grazing Permit Administration

Handbook; interim directives, 41370–41372

General Services Administration**NOTICES**

Federal Acquisition Regulation (FAR):

Agency information collection activities; proposals, submissions, and approvals, 41378–41380

Health and Human Services Department

See Agency for Healthcare Research and Quality

See Centers for Disease Control and Prevention

See Food and Drug Administration

See Substance Abuse and Mental Health Services Administration

Homeland Security Department

See Coast Guard

See Customs and Border Protection Bureau

See Federal Emergency Management Agency

See Transportation Security Administration

See U.S. Citizenship and Immigration Services

Indian Affairs Bureau**NOTICES**

Environmental statements; notice of intent:

Crow Creek Reservation, SD; reconstruction project and public scoping meetings, 41425

Interior Department

See Fish and Wildlife Service

See Indian Affairs Bureau

See Land Management Bureau

See Minerals Management Service

Internal Revenue Service**RULES**

Income taxes:

Brokers and barter exchanges; information returns; CFR correction, 41343

International Trade Administration**NOTICES**

Scope rulings and anticircumvention determinations; list, 41374–41376

International Trade Commission**NOTICES**

Import investigations:

Ammonium nitrate from—

Russia, 41426–41427

Brass sheet and strip from—

Various countries, 41427

Polyester staple fiber from—

Korea and Taiwan, 41427–41428

Labor Department

See Employment and Training Administration

See Employment Standards Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 41428–41429

Land Management Bureau**PROPOSED RULES**

Minerals management:

Fee changes, 41532–41554

NOTICES

Public land orders:

Idaho, 41425–41426

Survey plat filings:

Minnesota, 41426

Minerals Management Service**RULES**

Outer Continental Shelf; oil, gas, and sulphur operations:

Fixed and floating platforms, structures, and documents; incorporation by reference, 41556–41583

National Aeronautics and Space Administration**NOTICES**

Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals,
submissions, and approvals, 41378–41380

National Highway Traffic Safety Administration**NOTICES**

Motor vehicle safety standards:
Advanced Crash Avoidance Technologies Program; crash
avoidance systems performance; information request,
41474–41475
Exemption petitions, etc.—
Goodyear Tire & Rubber Co., 41475–41476
Toyota Motor North America, Inc., 41476–41477
Nonconforming vehicles—
Importation eligibility; determinations, 41477–41478
Motor vehicle safety standards; exemption petitions, etc.:
Bridgestone/Firestone North America Tire, LLC, 41478–
41479

National Mediation Board**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 41439–41440

National Oceanic and Atmospheric Administration**RULES**

Fishery conservation and management:
Northeastern United States fisheries—
Northeast multispecies, 41348–41349

Nuclear Regulatory Commission**NOTICES**

Environmental statements; availability, etc.:
Entergy Nuclear Operations, Inc., 41440–41441
Meetings:
National Enrichment Facility, NM; safety evaluation
report and environmental impact statement, 41441
Meetings; Sunshine Act, 41441–41442
Operating licenses, amendments; no significant hazards
considerations; biweekly notices, 41442–41449

Overseas Private Investment Corporation**NOTICES**

Meetings; Sunshine Act, 41449

Personnel Management Office**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 41450–41451

Presidential Documents**ADMINISTRATIVE ORDERS**

Government agencies and employees:
State Department; assignment of a reporting function
(Memorandum of July 1, 2005), 41341

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 41451–41466
New York Stock Exchange, Inc., 41466–41469
Options Clearing Corp., 41469–41471
Pacific Exchange, Inc., 41471–41472

**Substance Abuse and Mental Health Services
Administration****NOTICES**

Grants and cooperative agreements; availability, etc.:
FY 2006; funding availability and requests for
applications, 41407–41413
Meetings:
Mental Health Services Center National Advisory
Council, 41413

Surface Transportation Board**NOTICES**

Rail carriers:
Control exemptions—
BNSF Railway Co., 41479–41480
Kansas City Southern Railway Co., 41479

Tennessee Valley Authority**NOTICES**

Meetings; Sunshine Act, 41472–41474

Textile Agreements Implementation Committee

See Committee for the Implementation of Textile
Agreements

Transportation Department

See Federal Aviation Administration

See National Highway Traffic Safety Administration

See Surface Transportation Board

RULES

Air travel; nondiscrimination on basis of disability:
Individuals with disabilities; rights and responsibilities;
technical assistance manual, 41482–41530

Transportation Security Administration**RULES**

Civil aviation security:
Ronald Reagan Washington National Airport; enhanced
security procedures for certain aircraft operations,
41586–41603

Treasury Department

See Internal Revenue Service

U.S. Citizenship and Immigration Services**NOTICES**

Agency information collection activities; proposals,
submissions, and approvals, 41417–41422

Separate Parts In This Issue**Part II**

Transportation Department, 41482–41530

Part III

Interior Department, Land Management Bureau, 41532–
41554

Part IV

Interior Department, Minerals Management Service, 41556–
41583

Part V

Homeland Security Department, Transportation Security
Administration, 41586–41603

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR**Administrative Orders:****Memorandums:**

Memorandum of April
21, 2005 (Amended
by Memorandum of
July 1, 2005) 41341
Memorandum of July
1, 2005 41341

14 CFR

382 41482

Proposed Rules:

39 (3 documents) 41350,
41352, 41354

21 CFR**Proposed Rules:**

Ch. 1 41356

26 CFR

1 41343

30 CFR

250 41556

33 CFR

165 (2 documents) 41343,
41345

40 CFR**Proposed Rules:**

261 41358

43 CFR**Proposed Rules:**

3000 41532
3100 41532
3120 41532
3130 41532
3150 41532
3160 41532
3200 41532
3470 41532
3500 41532
3600 41532
3800 41532
3830 41532
3833 41532
3835 41532
3836 41532
3860 41532
3870 41532

44 CFR

64 41347

49 CFR

1520 41586
1540 41586
1562 41586

50 CFR

648 41348

Federal Register

Vol. 70, No. 137

Tuesday, July 19, 2005

Presidential Documents

Title 3—

Memorandum of July 1, 2005

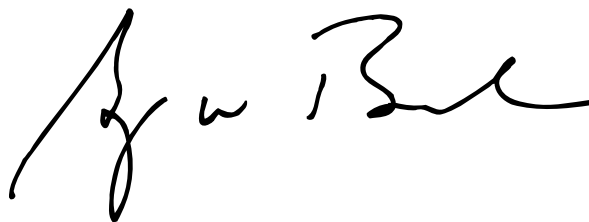
The President

Assignment of Reporting Function

Memorandum for the Secretary of State

My memorandum on “Assignment of Reporting Functions under the Intelligence Reform and Terrorism Prevention Act of 2004” of April 21, 2005, is amended by striking “7119(a)” and inserting in lieu thereof “7120.”

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 1, 2005.

Editorial Note: The Presidential memorandum dated April 21, 2005, entitled “Assignment of a Reporting Function under the Intelligence Reform and Terrorism Prevention Act of 2004,” was printed in the **Weekly Compilation of Presidential Documents** issue of April 25, 2005, beginning on page 655.

[FR Doc. 05-13587

Filed 7-18-05; 8:45 am]

Billing code 4710-10-P

Rules and Regulations

Federal Register

Vol. 70, No. 137

Tuesday, July 19, 2005

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

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

INTERNAL REVENUE SERVICE

26 CFR Part 1

Income Taxes

CFR Correction

In Title 26 of the Code of Federal Regulations, Part 1 (§ 1.1551 to End), revised as of April 1, 2005, in § 1.6045-1(g)(4), *Example 9*, on page 252, second column, the last paragraph designated (i) and on page 253 first column, first complete paragraph designated (ii) are removed.

[FR Doc. 05-55506 Filed 7-18-05; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13-05-026]

RIN 1625-AA00

Safety Zone: Hydroplane Races, Columbia Park, Kennewick, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Columbia River during hydroplane races. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these vessels that travel at a high rate of speed. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation is effective from 7 a.m. (PDT) to 7 p.m. (PDT) each day on July 29-31, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the

docket are part of docket (CGD13-05-026) and are available for inspection or copying at U.S. Coast Guard Sector Portland, 6767 N. Basin Avenue, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Petty Officer Charity Keuter, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240-9301.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is establishing a temporary safety zone to allow for a safe racing event. This event occurs on the Columbia River in Lake Wallula in the vicinity of Columbia Park in Kennewick, WA and is scheduled to start at 7 a.m. (PDT) and last until 7 p.m. (PDT) each day on July 29-31, 2005. This event may result in a number of recreational vessels congregating near the hydroplane races. The safety zone is needed to protect watercraft and their occupants from safety hazards associated with the event. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other federal, state, and local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs

and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph (10)(e) of the regulatory policies and procedures act of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the proposed regulation will encompass a small portion of the river for twelve hours on three days.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Columbia River during the time mentioned under *Background and Purpose*. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will encompass a small portion of the river for twelve hours on three days. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk

to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4379f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Categorical Exclusion is provided for temporary safety zones of less than one week in duration. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary section 165.T13-008 is added to read as follows:

§ 165.T13-008 Safety Zone; Hydroplane Races, Columbia Park, Kennewick, Washington.

(a) *Location.* The following area is a safety zone: the waters of the Columbia River in the vicinity of Columbia Park on Lake Wallula in Kennewick, Washington commencing at 46°14'07" N, 119°10'42" W following the shoreline to 46°13'35" N, 119°07'34" W then south to 46°13'10" N, 119°07'47" W following the shoreline to 46°13'42" N, 119°10'51" W then back to the point of origin.

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

(c) *Effective period.* This regulation is effective from 7 a.m. (PDT) until 7 p.m. (PDT) each day on July 29-31, 2005.

Dated: July 11, 2005.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 05-14141 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 165****[CGD13-05-027]****RIN 1625-AA00****Safety Zones: Fireworks Displays in the Captain of the Port Portland Zone****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the waters of the Willamette and Columbia Rivers, located in the Area of Responsibility (AOR) of the Captain of the Port, Portland, Oregon, during fireworks displays. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with these displays. Entry into these safety zones is prohibited unless authorized by the Captain of the Port.

DATES: This rule is effective from 9:30 p.m. on August 6, 2005 until 10:30 p.m. on September 17, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD13-05-027) and are available for inspection or copying at the U.S. Coast Guard Sector Portland, 6767 N. Basin Ave, Portland, Oregon 97217 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Charity Keuter, c/o Captain of the Port, Portland 6767 N. Basin Avenue, Portland, Oregon 97217, (503) 240-9301.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and spectators gathering in the vicinity of the various fireworks launching barges and displays. If normal notice and comment procedures were followed, this rule would not become effective until after the dates of the events. For this reason, following normal rulemaking procedures in this

case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard is establishing temporary safety zones to allow for safe fireworks displays. All events occur within the Captain of the Port, Portland, OR, Area of Responsibility (AOR). These events may result in a number of vessels congregating near fireworks launching barges and sites. The safety zones are needed to protect watercraft and their occupants from safety hazards associated with fireworks displays. This safety zone will be enforced by representatives of the Captain of the Port, Portland, Oregon. The Captain of the Port may be assisted by other Federal and local agencies.

Discussion of Rule

This rule, for safety concerns, will control vessels, personnel and individual movements in a regulated area surrounding the fireworks event indicated in section 2 of this Temporary Final Rule. Entry into these zones is prohibited unless authorized by the Captain of the Port, Portland or his designated representative. Captain of the Port, Portland, Oregon, will enforce these safety zones. The Captain of the Port may be assisted by other Federal and local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. This rule is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures act of DHS is unnecessary. This expectation is based on the fact that the regulated areas established by the proposed regulation will encompass small portions of the Columbia and Willamette Rivers in the Portland AOR on different dates, all in the evening when vessel traffic is low.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises

small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Willamette and Columbia Rivers during the times mentioned in section 2(a)(1-4) at the conclusion of this rule. These safety zones will not have significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only sixty minutes during the evenings when vessel traffic is low. Traffic will be allowed to pass through the zone with the permission of the Captain of the Port or his designated representatives on scene, if safe to do so.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule establishes safety zones which have a duration of no more than two hours each. Due to the temporary safety zones being less than one week in duration, an Environmental Checklist and Categorical Exclusion is not required.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and Recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A temporary section 165.T13–009 is added to read as follows:

§ 165.T13–009 Safety Zones: Fireworks displays in the Captain of the Port Portland Zone.

(a) Safety Zones. The following areas are designated safety zones:

(1) World War II 60th Anniversary Fireworks Display, Vancouver, WA: (i) *Location*. All water of the Columbia River enclosed by the following points: 45°37′16″ N, 122°40′18″ W following the shoreline to 45°36′55″ N, 122°39′11″ W then south to 45°36′28″ N, 122°39′19″ W following the shoreline to 45°36′52″ N, 122°40′32″ W then back to the point of origin.

(ii) *Effective time and date*. 9:30 p.m. to 11 p.m. on August 28, 2005.

(2) Northwynd Grand Opening, Vancouver, WA: (i) *Location*. All water of the Columbia River enclosed by the following points: 45°37′04″ N, 122°39′29″ W following the shoreline to 45°36′50″ N, 122°38′56″ W then south to 45°36′50″ N, 122°38′56″ W west to 45°36′48″ N, 122°39′36″ W then back to the point of origin.

(ii) *Effective time and date*. 9:30 p.m. to 11 p.m. on August 20, 2005.

(3) City of Washougal Display, Washougal, WA: (i) *Location*. All water of the Columbia River extending out to a 600′ radius from the launch site at 45°33′52″ N, 122°40′14″ W.

(ii) *Effective time and date*. 9:30 p.m. to 11 p.m. on August 6, 2005.

(4) White Bird Fireworks Display, Portland, OR: (i) *Location*. All water of the Willamette River enclosed by the following points: 45°35′19″ N, 122°45′51″ W following the shoreline to 45°35′11″ N, 122°45′40″ W then southwest to 45°35′03″ N, 122°45′55″ W following the shoreline to 45°35′12″ N, 122°46′06″ W then back to the point of origin.

(ii) *Effective time and date*. 9 p.m. to 10:30 p.m. on September 17, 2005.

(b) Regulations. In accordance with the general regulations in Section 165.23 of this part, no person or vessel may enter or remain in this zone unless authorized by the Captain of the Port or his designated representatives.

Dated: July 11, 2005.

Paul D. Jewell,

Captain, U.S. Coast Guard, Captain of the Port, Portland, OR.

[FR Doc. 05–14142 Filed 7–18–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Part 64**

[Docket No. FEMA-7885]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

EFFECTIVE DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Michael M. Grimm, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646-2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management

measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification letter addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part

10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in a community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region VI: Oklahoma: Grady County, Unincorporated Areas. McClain County, Unincorporated Areas	400483 400538	September 17, 1985, Emerg; September 1, 1987, Reg; July 19, 2005, Susp. September 10, 1990, Emerg; February 3, 1993, Reg; July 19, 2005, Susp.	07/19/2005 do	07/19/2005 Do.
Region VIII: North Dakota: Bismarck, City of, Burleigh County.	380149	February 14, 1975, Emerg; September 18, 1985, Reg; July 19, 2005, Susp.	do	Do.

* Do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: July 12, 2005.

Michael Buckley,

*Acting Mitigation Division Deputy Director,
Emergency Preparedness and Response
Directorate.*

[FR Doc. 05–14122 Filed 7–18–05; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 040804229–4300–02; I.D.
071305B]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Prohibition of the use of Regular B Days-at-Sea in the Georges Bank Cod Stock Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has projected that 100 percent of the quarterly incidental total allowable catch (TAC) of Georges Bank (GB) cod specified to be harvested under the Regular B Days-at-Sea (DAS) Pilot Program will be harvested by July 18, 2005. Therefore, the use of Regular B DAS under the Regular B DAS Pilot Program is prohibited throughout the GB cod stock area through the end of the current quarter (see the **DATES** and **SUPPLEMENTARY INFORMATION** sections of this rule for further details). The intended effect of this action is to prevent over-harvesting the incidental catch TAC of GB cod under the Regular

B DAS Pilot Program during the current quarter, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: Effective 0001 hr local time, July 18, 2005, through 2400 hr local time, July 31, 2005. (See requirements under **SUPPLEMENTARY INFORMATION** for additional details).

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Policy Analyst, phone (978) 281–9141, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: The Regular B DAS Pilot Program, including quarterly incidental catch TAC's for species of concern, was implemented under Framework Adjustment 40–A (69 FR 67780, November 19, 2004) to the NE Multispecies FMP. Regulations governing the Regular B DAS Pilot Program are found at 50 CFR 648.85(b)(6). These regulations authorize vessels issued a valid limited access NE multispecies DAS permit and allocated Regular B DAS to use a NE multispecies Regular B DAS throughout the NE multispecies regulated mesh areas outside of approved Special Access Programs under the conditions of the Regular B DAS Pilot Program. For the GB cod stock, the quarterly TAC was specified at 32.01 mt. According to the regulations at § 648.85(b)(6)(iv)(G), once the Regional Administrator projects that 100 percent of one or more of the quarterly incidental catch TAC's have been harvested, the use of Regular B DAS under the Regular B DAS Pilot Program shall be prohibited for the pertinent stock area(s) for the duration of the quarter. The closure of a stock area will occur even if the incidental catch TAC's for other stocks in that stock area have not been completely harvested.

Based upon Vessel Monitoring System (VMS) reports and other available information, the Regional Administrator has determined that 100 percent of the

32.01–mt quarterly incidental catch TAC for GB cod will be harvested by July 18, 2005. Therefore, effective July 18, 2005, the use of Regular B DAS under the Regular B DAS Pilot Program in the GB Cod Stock Area, as defined at § 648.85(b)(6)(v)(B), is prohibited through the end of the current quarter on July 31, 2005. A NE multispecies DAS vessel that has already declared its intent to fish in the GB Cod Stock Area under the Regular B DAS Pilot Program through VMS, departed on a trip, and crossed the VMS demarcation line prior to the effective date of this action must either complete its trip under a Regular B DAS by crossing the VMS demarcation line on its return to port, or flip to fishing under a Category A DAS, before 0000 hours local time on July 18, 2005. Beginning August 1, 2005, NE multispecies DAS vessels may once again fish under the Regular B DAS Pilot Program within the GB Cod Stock Area.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment for this action because any delay of this action would be impracticable and contrary to the public interest. The regulations at § 648.85(b)(6)(iv)(G) require the Regional Administrator to prohibit the use of Regular B DAS in a particular stock area once 100 percent of the incidental catch TAC for that species is projected to be harvested. Accordingly, the action being taken by this temporary rule is non-discretionary. This action prohibits the use of Regular B DAS in the GB cod stock area for the remainder of the current quarter (i.e., through July 31, 2005) to prevent exceeding the quarterly incidental catch TAC for GB

cod. The possibility of this closure was contemplated by Framework 40-A and commented on by the public. It is not practicable to allow for additional public comment or a delayed effectiveness because of the need to take immediate action as soon as the data are available indicating that the TAC will be reached. If implementation of this action is delayed, NMFS would be prevented from carrying out its function of preventing excessive harvest of stocks of concern under the Regular B DAS Pilot Program. Opportunity for public comment would allow the harvest of stocks of concern to continue during this quarter, resulting in the likelihood of exceeding the quarterly incidental catch TAC for GB cod. Exceeding the

quarterly TAC for this species increases the chance that such additional mortality could further delay the rebuilding of this overfished stock. Exceeding the mortality targets for this species could potentially lead to further effort restrictions in the future and, therefore, further negative economic impacts to the fishing industry. Thus, any delay caused by further opportunity for public comment would be impracticable and contrary to the public interest. For the above reasons, under 5 U.S.C. 553(b)(3), proposed rulemaking is waived because it would be impracticable and contrary to the public interest.

For the same reasons, the Assistant Administrator finds good cause,

pursuant to 5 U.S.C. 553(d)(3), to waive the entire 30-day delayed effectiveness period for this action. The effect of this waiver is mitigated to some degree because the public is able to obtain information from the NMFS Northeast Regional Office website at <http://www.nero.noaa.gov> which provides catch information indicating the need for this action.

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. 05-14184 Filed 7-14-05; 2:52 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 70, No. 137

Tuesday, July 19, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21861; Directorate Identifier 2005-NM-093-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A320-111 Airplanes, and Model A320-200 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A320-111 airplanes, and Model A320-200 series airplanes. This proposed AD would require installing a bonding strip between each of the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21. This proposed AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent an ignition source for fuel vapor in the wing, which could result in fire or explosion in the center wing fuel tank.

DATES: We must receive comments on this proposed AD by August 18, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.
- By fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA-2005-21861; the directorate identifier for this docket is 2005-NM-093-AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21861; Directorate Identifier 2005-NM-093-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR

19477-78), or you can visit <http://dms.dot.gov>.

Examining the Docket

You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

We have examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended

to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A320-111 airplanes, and Model A320-200 series airplanes. The DGAC advises that a design review showed that the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21 are not electrically bonded. If a bonding strip is not installed between each of the scavenge jet pumps and the rear spar, an ignition source could be provided for fuel vapor in the wing and cause fire or explosion in the center fuel tank.

Relevant Service Information

Airbus has issued Service Bulletin A320-28-1067, Revision 02, dated January 27, 1997. The service bulletin describes procedures for installing a bonding strip between each of the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F-2005-056,

dated April 13, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions described previously, except as discussed under "Difference Between French Airworthiness Directive and This Proposed AD."

Difference Between French Airworthiness Directive and This Proposed AD

The applicability of French Airworthiness Directive F-2005-056 excludes airplanes on which Airbus Service Bulletin A320-28-1067, Revision 02, has been accomplished in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in that service bulletin. This requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

This proposed AD would affect about 371 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of \$65 per work hour. Required parts would be supplied by the manufacturer at no charge. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$24,115, or \$65 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of

the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA-2005-21861;
Directorate Identifier 2005-NM-093-AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 18, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A320-111, -211, -212, -214, -231, -232, and -233 airplanes, certificated in any category; except those airplanes on which Airbus Modification 25513 has been accomplished in production.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source for fuel vapor in the wing, which could result in fire or explosion in the adjacent wing fuel tank.

Compliance

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

Installation of Bonding Strips

(f) Within 56 months after the effective date of this AD, install a bonding strip between each of the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-28-1067, Revision 02, dated January 27, 1997.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) French airworthiness directive F-2005-056, dated April 13, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 22, 2005.

Ali Bahrami,

*Manager, Transport Airplane Directorate,
Aircraft Certification Service.*

[FR Doc. 05-14171 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21862; Directorate Identifier 2005-NM-091-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A320-111 Airplanes; and Model A320-200, A321-100, and A321-200 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A320-111 airplanes; and Model A320-200, A321-100, and A321-200 series airplanes. This proposed AD would require installing a bonding lead between the low pressure valve and the adjacent pipe assembly in each wing. This proposed AD is prompted by the results of fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent an ignition source for fuel vapor in the wing, which could result in fire or explosion in the adjacent wing fuel tank.

DATES: We must receive comments on this proposed AD by August 18, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- By fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street,

SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA-2005-21862; the directorate identifier for this docket is 2005-NM-091-AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21862; Directorate Identifier 2005-NM-091-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you can visit <http://dms.dot.gov>.

Examining the Docket

You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

We have examined the underlying safety issues involved in recent fuel

tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category

airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A320-111 airplanes; and Model A320-200, A321-100, and A321-200 series airplanes. The DGAC advises that a design review showed that the low pressure (LP) valve and the adjacent pipe assembly in each wing are not electrically bonded. If a bonding lead is not installed, an ignition source could be provided for fuel vapor in the wing, which could result in fire or explosion in the adjacent wing fuel tank.

Relevant Service Information

Airbus has issued Service Bulletin A320-28-1055, Revision 1, dated March 8, 1994. The service bulletin describes procedures for installing a bonding lead between the LP valve and the adjacent pipe assembly in each wing. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F-2005-058, dated April 13, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service bulletin described previously.

Difference Between French Airworthiness Directive and This Proposed AD

The applicability of French Airworthiness Directive F-2005-058 excludes airplanes on which Airbus Service Bulletin A320-28-1055 at original issue or Revision 1 have been accomplished in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in Revision 1 of that service bulletin. This requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

This proposed AD would affect about 403 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of \$65 per work hour. Required parts would be obtained from operator stores. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$52,390, or \$130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or

on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA-2005-21862; Directorate Identifier 2005-NM-091-AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 18, 2005.

Affected ADs

- (b) None.

Applicability

(c) This AD applies to Airbus Model A320-111, -211, -212, -214, -231, -232, and -233 airplanes, and Model A321-111, -112, -131, -211 and -231 airplanes, certificated in any category; except those airplanes on which Airbus Modification 23645 has been incorporated in production.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source for fuel vapor in the wing, which could result in fire or explosion in the adjacent wing fuel tank.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance times specified, unless the actions have already been done.

Installation of Bonding Lead

(f) Within 56 months after the effective date of this AD, install a bonding lead between the low pressure valve and the adjacent pipe assembly in each wing, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-28-1055, Revision 1, dated March 8, 1994.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) French airworthiness directive F-2005-058, dated April 13, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 11, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-14170 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-21860; Directorate Identifier 2005-NM-032-AD]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A330-200, A330-300, A340-200, and A340-300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A330-200, A330-300, A340-200, and A340-300 series airplanes. This proposed AD would require operators to modify the hydraulic control block of the nose landing gear. This proposed AD is prompted by a report of an unexpected steering event (swerve) during the take-off roll of one affected airplane. We are proposing this AD to prevent loss of airplane steering while on the ground, which could result in the airplane going off the side of the runway.

DATES: We must receive comments on this proposed AD by August 18, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL-401, Washington, DC 20590.

- By fax: (202) 493-2251.

- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

You can examine the contents of this AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL-401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA-2005-21860; the directorate identifier for this docket is 2005-NM-032-AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2797; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2005-21860; Directorate Identifier 2005-NM-032-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to <http://dms.dot.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket

Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit <http://dms.dot.gov>.

Examining the Docket

You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A330–200, A330–300, A340–200, and A340–300 series airplanes. The DGAC advises that a Model A340 series airplane had an unexpected steering event (swerve) during its take-off roll, while traveling at 47 knots. Analysis showed that the event was caused by a braking and steering control unit (BSCU) channel 1 fault, followed by a loss of the nose wheel steering (NWS). This condition, if not corrected, could result in the loss of airplane steering while on the ground, and the airplane going off the side of the runway.

Relevant Service Information

Airbus has issued Airbus Service Bulletin A330–32–3156, and Airbus Service Bulletin A340–32–4194, both dated December 22, 2004. The service bulletins describe procedures for modifying the hydraulic control block (HCB) of the nose landing gear by adding a check valve between the selector valve and the servo valve. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–016, dated January 19, 2005, to ensure the continued airworthiness of these airplanes in France.

The service bulletins refer to Messier-Bugatti Service Bulletin C24856–32–

064, dated January 26, 2005, as an additional source of service information for modifying the HCB.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 22 Model A330–200 and A330–300 airplanes of U.S. registry. The proposed actions would take about 39 work hours per airplane, at an average labor rate of \$65 per work hour. There is no charge for required parts. Based on these figures, the estimated cost of the proposed AD for U.S. operators is \$55,770, or \$2,535 per airplane.

There are currently no Model A340–200 or Model A340–300 airplanes on the U.S. Register. Should one of these airplanes be imported and placed on the U.S. Register in the future, the proposed actions would take about 39 work hours per airplane, at an average labor rate of \$65 per work hour. Based on these figures, the estimated cost of the proposed AD would be \$2,535 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation

is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–21860; Directorate Identifier 2005–NM–032–AD.

Comments Due Date

- (a) The Federal Aviation Administration must receive comments on this AD action by August 18, 2005.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes;

and Model A340-211, -212, -213, -311, -312, and -313 airplanes; certificated in any category; with hydraulic control block (HCB) part number (P/N) C24856000-9 or C24856001-7.

Unsafe Condition

(d) This AD was prompted by a report of an unexpected steering event (swerve) during the take-off roll of one affected airplane. We are issuing this AD to prevent loss of airplane steering while on the ground, which could result in the airplane going off the side of the runway.

Compliance

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

Modification

(f) Within 30 months after the effective date of this AD: Modify the hydraulic control block (HCB) in accordance with the Accomplishment Instructions of the applicable service bulletin in paragraph (f)(1) or (f)(2) of this AD.

(1) Airbus Service Bulletin A330-32-3156, dated December 22, 2004, for Model A330-200 and A330-300 series airplanes.

(2) Airbus Service Bulletin A340-32-4194, dated December 22, 2004, for Model A340-200 and A340-300 series airplanes.

Note 1: The Airbus service bulletins refer to Messier-Bugatti Service Bulletin C24856-32-064, dated January 26, 2005, as an additional source of service information for doing the modification.

Parts Installation

(g) After the effective date of this AD, no person may install on any airplane an HCB having P/N C24856000-9 or C24856001-7, unless it has been modified in accordance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) French airworthiness directive F-2005-016, dated January 19, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on July 11, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 05-14172 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 2005N-0279]

Food Labeling; Gluten-Free Labeling of Foods; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to obtain expert comment and consultation from stakeholders to help the agency to define and permit the voluntary use on food labeling of the term "gluten-free". The meeting will focus on food manufacturing, analytical methods, and consumer issues related to reduced levels of gluten in food. We request that those who wish to speak at the meeting, or otherwise provide FDA with their written or oral comments, focus on the questions set out in this document.

DATES: The public meeting will be held on Friday, August 19, 2005, from 8:30 a.m. to 5 p.m. All those attending the meeting must register by August 12, 2005. See the "Registration" heading of the **SUPPLEMENTARY INFORMATION** section of this document for details on how to register. Submit written or electronic comments by September 19, 2005.

ADDRESSES: The public meeting will be held at the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., Harvey W. Wiley Auditorium, College Park, MD 20740.

You may submit written comments, identified with Docket No. 2005N-0279, to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>.

FOR FURTHER INFORMATION CONTACT:

For general questions about the meeting, to register, to request permission to speak at the meeting, to request onsite parking, or if you need special accommodations due to a disability: Marion V. Allen, Center for Food Safety and Applied Nutrition (HFS-32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1584, FAX: 301-436-2605, e-mail: marion.allen@fda.hhs.gov.

For technical questions: Rhonda R. Kane, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2371, FAX: 301-436-2636, e-mail: rhonda.kane@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Celiac disease (also known as celiac sprue) is a chronic inflammatory disorder of the small intestine triggered by ingesting certain storage proteins that naturally occur in cereal grains. Celiac disease is genetically inherited, and its prevalence in the United States is estimated to be slightly less than 1 percent of the general population (Ref. 1).

The grains that are considered to cause problems for persons with celiac disease are wheat, barley, and rye, their related species (e.g., durum wheat, spelt, kamut) and crossbred hybrids (e.g., triticale), and possibly oats (Ref. 2). The scientific literature includes reports of celiac disease patients who can tolerate oats (Refs. 3 through 5) and others who cannot (Refs. 6 and 7). This intolerance may be due to the possible presence in commercially available oat products of trace amounts of other grains that are harmful to persons who have celiac disease (e.g., wheat, rye, or barley) (Refs. 2 and 8). However, there is also some evidence that naturally occurring proteins in uncontaminated oats may cause adverse effects in some celiac disease patients (Ref. 7).

Technically, the term "gluten" applies to the combination of storage proteins found in wheat, the prolamin proteins called "gliadins" and the glutelin proteins called "glutenins" (Ref. 9). However, in the context of celiac disease, the term "gluten" is often used to refer collectively to any of the proteins in the grains that may cause harm. Currently, to prevent severe and sometimes life-threatening complications of celiac disease, sensitive individuals need to avoid all offending sources of gluten (Refs. 10 through 12). Life-threatening complications can affect multiple organs of the body (Refs. 10 through 12).

The Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Title II of Public Law 108-282) at <http://www.cfsan.fda.gov/~dms/alrgact.html> requires FDA to issue, within 2 years of the enactment date, a proposed rule to define, and permit the use of, the term "gluten-free" on food labeling and a final rule within 4 years of enactment. FALCPA requires FDA to

consult with appropriate experts and stakeholders during the agency's development of the proposed rule. Establishing a definition of "gluten-free" that is both protective of the celiac population and that uniformly applies to "gluten-free" labeling statements for foods marketed in the United States will assist Americans with celiac disease to make more informed food consumption decisions.

II. Purpose and Scope of Meeting

FDA is holding this meeting to solicit comments from appropriate experts and stakeholders to assist us in developing a proposed rule to define and permit the use of the term "gluten-free," as required by FALCPA. The agency is interested in gathering information from the public, particularly the food industry on how "gluten-free" foods are manufactured, the analytical methods used to verify that foods are "gluten-free," and related costs of manufacturing "gluten-free" foods. The agency is also interested in receiving research data or findings on the food purchasing practices of consumers with celiac disease and their caregivers related to packaged products labeled or marketed as "gluten-free," compared to their purchasing practices of packaged products that are not so labeled.

The public meeting will not address issues regarding a threshold level of gluten (i.e., the amount of gluten below which it would be unlikely to elicit harmful effects in celiac disease patients) and the medical implications of celiac disease. These two issues were addressed at a meeting of FDA's Food Advisory Committee (FAC) on July 13 through 15, 2005 (70 FR 29528, May 23, 2005). The meeting agenda provided that the FAC would review and evaluate the Center for Food Safety and Applied Nutrition Threshold Working Group draft report entitled "Approaches to Establish Thresholds for Major Food Allergens and for Gluten in Food," which may be found on the Internet at <http://www.cfsan.fda.gov/~dms/alrgn.html>. FDA will consider all pertinent information, including the recommendations of the FAC and comments from this public meeting, in developing a definition and establishing the permissible use of the term "gluten-free" in food labeling.

III. Questions

FDA has drafted a series of questions to help focus the comments presented at the public meeting or otherwise communicated to the agency. Those who comment are invited to address any or all of these questions. FDA is particularly interested in receiving

related technical, scientific, and cost data from the food industry as well as research data or findings about the food purchasing practices of consumers with celiac disease or their caregivers. For the purpose of the list of questions in this document, FDA is using the following terms:

- "Gluten" refers to the proteins found in any of the grains that can cause harm to persons with celiac disease;
- "Grains of concern" refers to wheat, rye, barley, and oats, and their related species (e.g., durum, spelt, kamut) or crossbred hybrids (e.g., triticale); and
- "Gluten-free foods" refers to foods currently marketed in the United States that are either represented to be free of gluten or that contain statements or symbols on their labeling that identify the products as ones that do not contain gluten.

A. Definitions of "Gluten-Free"

1. How do food manufacturers define "gluten-free"? What is the generally accepted definition in the food industry of "gluten-free"? Please identify any entities that "certify" finished foods or raw ingredients to be "gluten-free". Describe how they define "gluten-free" and how they determine whether a food product satisfies this definition.

B. "Gluten-Free" Product Development

2. How are "gluten-free" foods produced? For example, are "gluten-free" foods made by using only ingredients that do not contain any gluten (i.e., they are inherently "gluten-free") or are they made by processing ingredients or the finished food to remove gluten? What methods are most commonly used to remove gluten from food?

3. Due to potential grain cross-contact situations, is it technologically feasible to produce "gluten-free" flour from grains other than those of concern (e.g., corn, millet)? Is it technologically feasible to produce oat-based products that do not contain gluten from grains of concern other than oats (e.g., wheat)? If so, what additional measures in the milling or manufacturing process would be needed to produce these products? Is it economically feasible to produce such products, and if so, what would be the incremental costs?

C. Good Manufacturing Practices and Analytical Methods

4. What measures do you have in place during the manufacturing, packaging, or holding of "gluten-free" foods to prevent them from coming into contact with any grains of concern? For example, do you use dedicated

facilities, dedicated equipment, or dedicated production lines?

5. What analytical method(s) do you use to evaluate your "gluten-free" products? How often do you perform these analyses? For example, do you test every batch of finished product? Do you test bulk containers of each ingredient? What is the cost of such testing?

6. The following questions seek data and information about available gluten detection test kits or analytical methods to detect gluten:

- In what grains can the test kit or method detect gluten?
- What specific mechanism is used to indicate the presence or absence of gluten?
- What is the sensitivity or lowest level of detection of your test kit or method?
- Is your test kit or method qualitative (i.e., establishes only the presence or absence of gluten) or quantitative?
- If quantitative, what is the limit of quantification of your test kit or method?
- What is the false positive rate of your test kit or method? What is its false negative rate?
- Is the effectiveness of your test kit or method affected by the nature of the processing of the "gluten-free" food, and if so, how? Is it affected by the food matrix, and if so, how? (FDA is especially interested in information that addresses the influence of the presence of fermented or hydrolyzed proteins, of xanthan gum, of guar gum, or of any other dietary fibers.)
- If your test kit or method has been validated, please indicate by whom it was validated and the level (e.g., parts per million) of detection at which it was validated.
- If your test kit or method has not been validated, have the results of its performance or an evaluation of its performance been published in a peer-reviewed scientific journal?
- What is the cost of your test kit or the cost to perform your method of analysis?

7. What analytical methods are currently available or under development to detect the presence of oat proteins in food? Please specify which proteins. What is the cost to conduct such analyses? Have any of these methods been validated or published in a peer-reviewed scientific journal?

D. Foods Marketed as "Gluten-Free"

8. Are there available research data or findings on what consumers with celiac disease or their caregivers believe the term "gluten-free" means? For example,

do the research data or findings show consumers' beliefs as to which specific grains or other ingredients are not present in foods labeled "gluten-free"?

E. Consumer Purchasing Practices

9. Are there available research data or findings on how consumers with celiac disease or their caregivers identify packaged foods that do not contain gluten? Do the data establish how much time these consumers devote to identifying such foods?

10. Are there available research data or findings on whether the packaged foods consumers with celiac disease or their caregivers currently purchase or consume are primarily or exclusively those foods labeled "gluten-free"? Do the research data or findings identify the types of "gluten-free" packaged foods (e.g., breads, dairy foods, canned vegetables) purchased or consumed by persons with celiac disease or their caregivers? Do the research data or findings show whether a "gluten-free" label influences the purchasing decision of persons with celiac disease or their caregivers when presented with products having identical ingredient lists?

IV. Registration

Please submit your registration information (including name, title, firm name (if applicable), address, telephone number, fax number (if available), and e-mail address (if available)) by August 12, 2005. We encourage you to register online at <http://www.cfsan.fda.gov/~comm/register.html> or by fax to Marion V. Allen at 301-436-2605. We will also accept registration onsite; however, space is limited and registration will be closed when the maximum seating capacity is reached. If you need special accommodations due to a disability (e.g., sign language interpreter), please inform Marion V. Allen (see **FOR FURTHER INFORMATION CONTACT**) no later than August 12, 2005, when you register. Please also specify whether you need onsite parking when you register.

If you wish to make a presentation, indicate this desire when registering and submit the following information by August 12, 2005: (1) A brief written statement about the general nature of the views you wish to present and (2) the names of any copresenters who must also register to attend. The amount of time allowed for each oral presentation at the public meeting may be limited (e.g., 5 minutes each), depending upon the number of persons who request to speak. Individuals and organizations that do not preregister to make a

presentation may have the opportunity to speak if time permits.

Persons preregistered or wishing to register onsite should check in between 7:30 and 8:30 a.m. Because the meeting will be held in a Federal building, meeting participants must present photo identification and plan adequate time to pass through the security system.

V. Comments

In addition to attending or presenting oral comments at the meeting, interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments related to the questions and the focus of this public meeting. All relevant data and information should be submitted with the written comments. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VI. Meeting Transcript

A transcript will be made of the meeting's proceedings. You may request a copy in writing from FDA's Freedom of Information Office (HFI-35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857, approximately 30 working days after the public meeting at a cost of 10 cents per page. The transcript of public meeting and all comments submitted will be available for public examination at the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Web site at <http://www.fda.gov/ohrms/dockets/default.htm>.

VII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be viewed between 9 a.m. and 4 p.m., Monday through Friday.

1. National Institutes of Health, Consensus Development Conference Statement, Celiac Disease, June 28 through 30, 2004, accessible on June 2005 at <http://consensus.nih.gov/cons/118/118celiacPDF.pdf>. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

2. Kasarda, D.D., "Grains in Relation to Celiac Disease," *Cereal Foods World*, 46(5):209-210, 2001.

3. Janatuinen, E.K., T.A. Kempainen, R.J. Julkunen, et al., "No Harm From Five Year Ingestion of Oats in Celiac Disease," *Gut*, 50(3):332-335, 2002.

4. Janatuinen, E.K., T.A. Kempainen, P.H. Pikkarainen, et al., "Lack of Cellular and Humoral Immunological Responses to Oats in Adults With Celiac Disease," *Gut*, 46(3):327-331, 2000.

5. Janatuinen, E.K., P.H. Pikkarainen, T.A. Kempainen, et al., "A Comparison of Diets With and Without Oats in Adults With Celiac Disease," *New England Journal of Medicine*, 333(16):1033-1037, 1995.

6. Lundin, K.E., E.M. Nilsson, H.G. Scott, et al., "Oats Induced Villous Atrophy in Celiac Disease," *Gut*, 52(11):1649-1652, 2003.

7. Arentz-Hansen, H., B. Fleckenstein, O. Molberg, et al., "The Molecular Basis for Oat Intolerance in Patients With Celiac Disease," *PLoS Medicine*, 1:84-92, 2004.

8. Thompson, T., "Gluten Contamination of Commercial Oat Products in the United States," *New England Journal of Medicine*, 351(19):2021-2022, 2004.

9. Brown A., *Understanding Food Principles and Preparation, Second Edition*, Wadsworth/Thomson Learning, Belmont CA, USA, pp. 402-403, 2004.

10. Corrao, G., G.R. Corazza, V. Bagnardi, et al., "Mortality in Patients With Celiac Disease and Their Relatives: A Cohort Study," *Lancet*, 358:356-361, 2001.

11. Dewar, D., S.P. Pereira, and P.J. Ciclitira, "The Pathogenesis of Celiac Disease," *International Journal of Biochemistry & Cell Biology*, 36:17-24, 2001.

12. Fasano, A. and C. Catassi, "Current Approaches to Diagnosis and Treatment of Celiac Disease: An Evolving Spectrum," *Gastroenterology*, 120(3):636-651, 2001.

Dated: July 13, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-14196 Filed 7-14-05; 4:31 pm]

BILLING CODE 4160-01-S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-7940-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: EPA is proposing to grant a petition submitted by General Motors Corporation-Arlington Truck Assembly Plant (GM-Arlington) to exclude (or delist) a wastewater treatment plant (WWTP) sludge generated by GM-Arlington in Arlington, TX. from the lists of hazardous wastes.

EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would exclude the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, EPA would conclude that GM-Arlington's petitioned waste is non-hazardous with respect to the original listing criteria. EPA would also conclude that GM-Arlington's process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: EPA will accept comments until September 2, 2005. EPA will stamp comments received after the close of the comment period as late. These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach EPA by August 3, 2005. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to Ben Banipal, Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third copy to Sam Barrett, Waste Section Manager, Texas Commission on Environmental Quality, 2309 Gravel Dr., Ft. Worth, TX 76118-6951. Identify your comments at the top with this regulatory docket number: "F-05-TXDEL-GM-Arlington."

You should address requests for a hearing to Ben Banipal, Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD-C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Comments may also be submitted electronically to Youngmoo Kim at kim.youngmoo@epa.gov.

SUPPLEMENTARY INFORMATION:

The information in this section is organized as follows:

I. Overview Information

- A. What action is EPA proposing?
 - B. Why is EPA proposing to approve this delisting?
 - C. How will GM-Arlington manage the waste, if it is delisted?
 - D. When would the proposed delisting exclusion be finalized?
 - E. How would this action affect States?
- ##### II. Background
- A. What is the history of the delisting program?

- B. What is a delisting petition, and what does it require of a petitioner?

- C. What factors must EPA consider in deciding whether to grant a delisting petition?

III. EPA's Evaluation of the Waste Information and Data

- A. What wastes did GM-Arlington petition EPA to delist?
- B. Who is GM-Arlington and what process does it use to generate the petitioned waste?
- C. How did GM-Arlington sample and analyze the data in this petition?
- D. What were the results of GM-Arlington's sample analysis?
- E. How did EPA evaluate the risk of delisting this waste?
- F. What did EPA conclude about GM-Arlington's analysis?
- G. What other factors did EPA consider in its evaluation?
- H. What is EPA's evaluation of this delisting petition?

IV. Next Steps

- A. With what conditions must the petitioner comply?
- B. What happens if GM-Arlington violates the terms and conditions?

V. Public Comments

- A. How may I as an interested party submit comments?
- B. How may I review the docket or obtain copies of the proposed exclusions?

VI. Regulatory Impact

VII. Regulatory Flexibility Act

VIII. Paperwork Reduction Act

IX. Unfunded Mandates Reform Act

X. Executive Order 13045

XI. Executive Order 13084

XII. National Technology Transfer and Advancements Act

XIII. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is EPA Proposing?

EPA is proposing:

(1) To grant GM-Arlington's delisting petition to have its WWTP sludge excluded, or delisted, from the definition of a hazardous waste; and be subject to certain verification and monitoring conditions.

(2) To use the Delisting Risk Assessment Software (DRAS) to evaluate the potential impact of the petitioned waste on human health and the environment. The Agency used this model to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed.

B. Why Is EPA Proposing To Approve This Delisting?

GM-Arlington's petition requests an exclusion from the F019 waste listing pursuant to §§ 260.20 and 260.22. GM-Arlington does not believe that the petitioned waste meets the criteria for which EPA listed it. GM-Arlington also believes no additional constituents or factors could cause the waste to be

hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)-(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's proposed decision to delist waste from GM-Arlington is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Arlington, TX facility.

C. How Will GM-Arlington Manage the Waste if It Is Delisted?

If the sludge is delisted, the WWTP sludge from GM-Arlington will be disposed of at the following RCRA Subtitle D lined landfill with a leachate collection system: Waste Management, East Oak Landfill, 3201 Mostley Road, Oklahoma City, OK 73141, EPA ID: OKD149934705. Since GM-Arlington intends to send its waste to Oklahoma and the Oklahoma Department of Environmental Quality (ODEQ) in the State is authorized for the delisting program, GM-Arlington must obtain delisting authorization from ODEQ before it can manage the waste as non-hazardous in Oklahoma.

D. When Would the Proposed Delisting Exclusion Be Finalized?

RCRA section 3001(f) specifically requires EPA to provide a notice and an

opportunity for comment before granting or denying a final exclusion. Thus, EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated facility does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect the States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only States subject to Federal RCRA delisting provisions would be affected. This would exclude States which have received authorization from EPA to make their own delisting decisions.

EPA allows States to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the State. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some States (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make State delisting decisions. Therefore, this exclusion does not apply in those authorized States unless that State makes the rule part of its authorized program. If GM-Arlington transports the petitioned waste to or manages the waste in any State with delisting authorization, GM-Arlington must obtain delisting authorization from that State before it can manage the waste as non-hazardous in the State.

II. Background

A. What Is the History of the Delisting Program?

EPA published an amended list of hazardous wastes from non-specific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. EPA has amended this list several times and published it in §§ 261.31 and 261.32.

EPA lists these wastes as hazardous because: (1) The wastes typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (that is, ignitability, corrosivity, reactivity, and toxicity), (2) the wastes meet the criteria for listing contained in § 261.11(a)(2) or (a)(3), or (3) the wastes are mixed with or derived from the treatment, storage or disposal of such characteristic and listed wastes and which therefore become hazardous under § 261.3(a)(2)(iv) or (c)(2)(i), known as the "mixture" or "derived-from" rules, respectively.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations or resulting from the operation of the mixture or derived-from rules generally is hazardous, a specific waste from an individual facility may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to EPA or an authorized State to exclude wastes from the list of hazardous wastes. The facility petitions EPA because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which the waste was listed. The criteria for which EPA lists a waste are in part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for EPA to decide whether factors other than those for which the

waste was listed warrant retaining it as a hazardous waste. (See part 261 and the listing background documents for F019 waste.)

Generators remain obligated under RCRA to confirm whether their waste remains non-hazardous based on the hazardous waste characteristics even if EPA has delisted the waste.

C. What Factors Must EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, EPA must consider any factors (including additional constituents) other than those for which EPA listed the waste, if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. See § 261.3(a)(2)(iii and iv) and (c)(2)(i), called the "mixture" and "derived-from" rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. EPA's Evaluation of the Waste Information and Data

A. What Waste Did GM-Arlington Petition EPA To Delist?

On September 14, 2004, GM-Arlington petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, WWTP sludge (F019) generated from its facility located in Arlington, Texas. The waste falls under the classification of listed waste pursuant to § 261.31. Specifically, in its petition, GM-Arlington requested that EPA grant a standard exclusion for 3,000 cubic yards per year of the WWTP sludge.

B. Who Is GM-Arlington and What Process Does It Use To Generate the Petitioned Waste?

The GM-Arlington is a Truck Assembly Plant. The Plant currently coats vehicle bodies containing at least one aluminum part with zinc phosphate. The zinc phosphate system at the Arlington Truck Assembly Plant consists of a nine-stage system designed to facilitate chemical cleaning of the product to ensure tight, uniform, defect-free phosphate coatings. The zinc phosphate coating is the foundation of the entire paint system that provides

paint adhesion and prevents under-film corrosion when the paint film is broken. Subsequent stages are intended to rinse and recover any deposited paint prior to oven baking. Overflows and rinse water from the coating process are discharged to the waste water treatment plant. In the waste water treatment process, the sludge listed as F019 from the thickeners and clarifiers is dewatered in one of several types of filter presses.

Acrylamide was a major compound of concern for other nationwide GM plant's petitions, but the waste analysis indicates no presence of acrylamide in the waste of GM-Arlington. The analytical data show that it is not a characteristic waste and contains little to no detectable concentrations of organic constituents.

C. How Did GM-Arlington Sample and Analyze the Data in This Petition?

To support its petition, GM-Arlington submitted:

- (1) Historical information on waste generation and management practices;
- (2) background information and Memorandum of Understanding for the Michigan Environmental Council of States project;
- (3) analytical results from six samples for total concentrations of constituents of concern (COCs);
- (4) analytical results from six samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values; and
- (5) multiple pH testing for the petitioned waste.

D. What Were the Results of GM-Arlington's Analyses?

EPA believes that the descriptions of the GM-Arlington analytical characterization provide a reasonable

basis to grant GM-Arlington's petition for an exclusion of the WWTP sludge. EPA believes the data submitted in support of the petition show the WWTP sludge is non-hazardous. Analytical data for the WWTP sludge samples were used in the DRAS to develop delisting levels. The data summaries for COCs are presented in Table I. EPA has reviewed the sampling procedures used by GM-Arlington and has determined that it satisfies EPA criteria for collecting representative samples of the variations in constituent concentrations in the WWTP sludge. In addition, the data submitted in support of the petition show that constituents in GM-Arlington's waste are presently below health-based levels used in the delisting decision-making. EPA believes that GM-Arlington has successfully demonstrated that the WWTP sludge is non-hazardous.

TABLE 1.—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION
[Wastewater Treatment Sludge, General Motors Truck Assembly Plant, Arlington, Texas]

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allow- able TCLP delisting level (mg/L)
Acetone	<7.5	0.23	171
Acetonitrile	<2.9	<0.10	399
Acrylonitrile	<0.59	<0.005	0.05
Allyl Chloride	<10	<0.01	0.12
Benzene	<0.59	<0.002	0.43
Carbon Tetrachloride	<0.59	<0.002	0.3
Chlorobenzene	<0.59	<0.002	4.56
Chloroform	<0.59	<0.01	0.58
1,1-Dichloroethane	<0.59	<0.002	9
1,2-Dichloroethane	<0.59	<0.002	0.012
1,1-Dichloroethylene	<0.59	<0.002	0.053
cis-1,2-Dichloroethylene	<0.59	<0.005	3.19
trans-1,2-Dichloroethylene	<0.59	<0.005	4.56
Ethylbenzene	<0.59	0.0038	31.9
Formaldehyde	<2.0	<0.10	257
Methyl Chloride	<2.5	<0.005	9.71
Methyl Ethyl Ketone	<2.5	<0.05	(200)
Methyl Isobutyl Ketone	<2.5	<0.10	137
Methyl Methacrylate	<2.9	<0.025	46
Methylene Chloride	<2.5	<0.05	0.216
n-Butyl Alcohol	<25	0.41	171
Styrene	<0.59	<0.005	4.56
1,1,1,2-Tetrachloroethane	<0.59	<0.002	1.82
1,1,2,2-Tetrachloroethane	<0.59	<0.005	3.29
Tetrachloroethane	<0.59	<0.002	0.23
Toluene	<0.59	0.0026	45.6
1,1,1-Trichloroethane	<0.59	<0.002	0.11
1,1,2-Trichloroethane	<0.59	<0.01	0.23
Trichloroethylene	<0.59	<0.002	0.23
Vinyl Acetate	<1.8	<0.005	83
Vinyl Chloride	<0.59	<0.002	0.022
Xylene(Total)	<1.8	<0.05	456
Bis(2-Ethylhexyl) Phthalate	2.1	<0.005	0.27
Butyl Benzyl Phthalate	<7.5	<0.005	69.6
o-Cresol	<1.5	<0.001	85.5
m-Cresol	<1.5	<0.001	85.5
p-Cresol	<1.5	0.014	8.55
1,4-Dichlorobenzene	<1.5	<0.001	1.31
2,4-Dimethylphenol	<3.0	<0.002	34.2
2,4-Dinitrotoluene	<1.5	<0.001	0.049
Di-n-Octyl Phthalate	<1.5	<0.002	0.084

TABLE 1.—ANALYTICAL RESULTS/MAXIMUM ALLOWABLE DELISTING CONCENTRATION—Continued
[Wastewater Treatment Sludge, General Motors Truck Assembly Plant, Arlington, Texas]

Constituents	Maximum total (mg/kg)	Maximum TCLP (mg/L)	Maximum allowable TCLP delisting level (mg/L)
Hexachlorobenzene	<1.5	<0.001	0.0016
Hexachlobutadiene	<1.5	<0.005	0.045
Hexachloroethane	<7.5	<0.005	0.74
Naphthalene	<1.5	0.0022	3.11
Nitrobenzene	<1.5	<0.001	0.86
Pentachlorophenol	<1.5	<0.002	0.043
Pyridine	<3.0	<0.02	1.71
2,4,5-Trichlorophenol	<1.5	<0.001	68.6
2,4,6-Trichlorophenol	<1.5	<0.001	(2)
Antimony	<20	<0.05	0.49
Arsenic	<50	<0.02	0.022
Barium	2,200	0.5	(100)
Beryllium	<1.0	<0.027	0.998
Cadmium	1.5	<0.03	0.36
Chromium	76	<0.15	(5)
Cobalt	3.4	<0.036	18.02
Lead	69	<0.18	(5)
Mercury	<0.1	<0.0006	0.19
Nickel	2,770	22.5	67.8
Selenium	<20	<0.072	(1)
Silver	46	0.31	(5)
Thallium	<20	<0.02	0.21
Tin	396	15.6	540
Vanadium	<5	<0.036	50.6
Zinc	9,530	0.91	673

Notes:

1. These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific level found in one sample.
2. The delisting levels are from the DRAS analyses except the chemicals with a parenthesis which are the TCLP regulatory levels.

E. How Did EPA Evaluate the Risk of Delisting the Waste?

For this delisting determination, EPA used such information gathered to identify plausible exposure routes (*i.e.*, groundwater, surface water, air) for hazardous constituents present in the petitioned waste. EPA determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for GM-Arlington's petitioned waste. EPA applied the Delisting Risk Assessment Software (DRAS) described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of GM-Arlington's petitioned waste on human health and the environment. A copy of this software can be found on the World Wide Web at http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm. In assessing potential risks to groundwater, EPA used the maximum waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the groundwater at a

hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 1.0), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and EPA health-based numbers. Using the maximum compliance-point concentrations and EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in groundwater.

EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible groundwater contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios resulted in conservative values for the compliance-point concentrations and ensures that the waste, once removed

from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization from the landfill). As in the above groundwater analyses, the DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or "delisting levels").

In most cases, because a delisted waste is no longer subject to hazardous waste control, EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. EPA does control the type of unit where the waste is

disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste are presented in Table I. Based on the comparison of the DRAS and TCLP Analyses results found in Table I, the petitioned waste should be delisted because no constituents of concern tested are likely to be present or formed as reaction products or by-products in GM-Arlington waste.

F. What Did EPA Conclude About GM-Arlington's Waste Analysis?

EPA concluded, after reviewing GM-Arlington's processes that no other hazardous constituents of concern, other than those for which tested, are likely to be present or formed as reaction products or by-products in the waste. In addition, on the basis of explanations and analytical data provided by GM-Arlington, pursuant to § 260.22, EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, reactivity or toxicity. See §§ 261.21, 261.22 and 261.23, respectively.

G. What Other Factors Did EPA Consider In Its Evaluation?

During the evaluation of GM-Arlington's petition, EPA also considered the potential impact of the petitioned waste via non-groundwater routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, EPA believes that exposure to airborne contaminants from GM-Arlington's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from GM-Arlington's waste under any likely disposal conditions. EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from GM-Arlington's waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from GM-Arlington's WWTP sludge.

H. What Is EPA's Evaluation of This Delisting Petition?

The descriptions of GM-Arlington's hazardous waste process and analytical characterization provide a reasonable basis for EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the leachable concentrations (see Table I). EPA believes that GM-

Arlington's waste, F019 from zinc phosphate coating process will not impose any threat to human health and the environment.

Thus, EPA believes GM-Arlington should be granted an exclusion for the WWTP sludge. EPA believes the data submitted in support of the petition show GM-Arlington's WWTP sludge is non-hazardous. The data submitted in support of the petition show that constituents in GM-Arlington's waste are presently below the compliance point concentrations used in the delisting decision and would not pose a substantial hazard to the environment. EPA believes that GM-Arlington has successfully demonstrated that the WWTP sludge is non-hazardous.

EPA therefore, proposes to grant an exclusion to GM-Arlington in Arlington, Texas, for the WWTP sludge described in its petition. EPA's decision to exclude this waste is based on descriptions of the treatment activities associated with the petitioned waste and characterization of the WWTP sludge.

If EPA finalizes the proposed rule, EPA will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, GM-Arlington, must comply with the requirements in 40 CFR part 261, appendix IX, table 1. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which GM-Arlington must test the WWTP sludge, below which these wastes would be considered non-hazardous.

EPA selected the set of inorganic and organic constituents specified in paragraph (1) of 40 CFR part 261, appendix IX, table 1, (the exclusion language) based on information in the petition. EPA compiled the inorganic and organic constituents list from the composition of the waste, descriptions of GM-Arlington's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP concentrations.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that GM-Arlington manages and

disposes of any WWTP sludge that contains hazardous levels of inorganic and organic constituents according to subtitle C of RCRA. Managing the WWTP sludge as a hazardous waste until initial verification testing is performed will protect against improper handling of hazardous material. If EPA determines that the data collected under this paragraph do not support the data provided for in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective upon publication in the **Federal Register** but the disposal as non-hazardous cannot begin until the verification sampling is completed.

(3) Verification Testing Requirements

GM-Arlington must complete a rigorous verification testing program on the WWTP sludge to assure that the sludge does not exceed the maximum levels specified in paragraph (1) of the exclusion language. This verification program operates on two levels. The first part of the verification testing program consists of testing the WWTP sludge for specified indicator parameters as per paragraph (1) of the exclusion language.

If EPA determines that the data collected under this paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. If the data from the initial verification testing program demonstrate that the leachate meets the delisting levels, GM-Arlington may request quarterly testing. EPA will notify GM-Arlington, in writing, if and when it may replace the testing conditions in paragraph (3)(A) with the testing conditions in (3)(B) of the exclusion language.

The second part of the verification testing program is the quarterly testing of representative samples of WWTP sludge for all constituents specified in paragraph (1) of the exclusion language. EPA believes that the concentrations of the constituents of concern in the WWTP sludge may vary over time. Consequently this program will ensure that the sludge is evaluated in terms of variation in constituent concentrations in the waste over time.

The proposed subsequent testing would verify that GM-Arlington operates a treatment facility where the constituent concentrations of the WWTP sludge do not exhibit unacceptable temporal and spatial levels of toxic constituents. EPA is proposing to require GM-Arlington to analyze representative samples of the WWTP sludge quarterly during the first year of waste generation. GM-Arlington would begin quarterly sampling 60 days after

the final exclusion as described in paragraph (3)(B) of the exclusion language.

EPA, per paragraph (3)(C) of the exclusion language, is proposing to end the subsequent testing conditions after the first year, if GM-Arlington has demonstrated that the waste consistently meets the delisting levels. To confirm that the characteristics of the waste do not change significantly over time, GM-Arlington must continue to analyze a representative sample of the waste on an annual basis. Annual testing requires analyzing the full list of components in paragraph (1) of the exclusion language. If operating conditions change as described in paragraph (4) of the exclusion language, GM-Arlington must reinstate all testing in paragraph (1) of the exclusion language.

GM-Arlington must prove through a new demonstration that their waste meets the conditions of the exclusion. If the annual testing of the waste does not meet the delisting requirements in paragraph (1), GM-Arlington must notify EPA according to the requirements in paragraph (6) of the exclusion language. The facility must provide sampling results that support the rationale that the delisting exclusion should not be withdrawn.

(4) Changes in Operating Conditions

Paragraph (4) of the exclusion language would allow GM-Arlington the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. However, GM-Arlington must prove the effectiveness of the modified process and request approval from EPA. GM-Arlington must manage wastes generated during the new process demonstration as hazardous waste until it has obtained written approval and paragraph (3) of the exclusion language is satisfied.

(5) Data Submittals

To provide appropriate documentation that GM-Arlington's WWTP sludge is meeting the delisting levels, GM-Arlington must compile, summarize, and keep delisting records on-site for a minimum of five years. It should keep all analytical data obtained through paragraph (3) of the exclusion language including quality control information for five years. Paragraph (5) of the exclusion language requires that GM-Arlington furnish these data upon request for inspection by any employee or representative of EPA or the State of Texas.

If the proposed exclusion is made final, it will apply only to 3,000 cubic yards per year of wastewater treatment sludge generated at the GM-Arlington after successful verification testing.

EPA would require GM-Arlington to file a new delisting petition under any of the following circumstances:

(a) If it significantly alters the manufacturing process treatment system except as described in paragraph (4) of the exclusion language;

(b) If it uses any new manufacturing or production process(es), or significantly changes from the current process(es) described in their petition; or

(c) If it makes any changes that could affect the composition or type of waste generated.

GM-Arlington must manage waste volumes greater than 3,000 cubic yards per year of WWTP sludge as hazardous until EPA grants a new exclusion.

When this exclusion becomes final, GM-Arlington's management of the wastes covered by this petition would be relieved from subtitle C jurisdiction and the WWTP sludge from GM-Arlington will be disposed in the RCRA subtitle D landfill of Waste Management East Oak Landfill in Oklahoma City, OK, with EPA ID: OKD149934705.

(6) Reopener

The purpose of paragraph (6) of the exclusion language is to require GM-Arlington to disclose new or different information related to a condition at the facility or disposal of the waste, if it is pertinent to the delisting. GM-Arlington must also use this procedure if the waste sample in the annual testing fails to meet the levels found in paragraph (1). This provision will allow EPA to reevaluate the exclusion if a source provides new or additional information to EPA. EPA will evaluate the information on which EPA based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause EPA to deny the petition, if presented.

This provision expressly requires GM-Arlington to report differing site conditions or assumptions used in the petition in addition to failure to meet the annual testing conditions within 10 days of discovery. If EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551

(1978) *et seq.*, to reopen a delisting decision. EPA may reopen a delisting decision when it receives new information that calls into question the assumptions underlying the delisting.

EPA believes a clear statement of its authority in delistings is merited in light of EPA's experience. See Reynolds Metals Company at 62 FR 37694 and 62 FR 63458 where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading EPA to repeal the delisting. If an immediate threat to human health and the environment presents itself, EPA will continue to address these situations on a case by case basis. Where necessary, EPA will make a good cause finding to justify emergency rulemaking. See APA § 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, EPA is requiring that GM-Arlington provide a one-time notification to any state regulatory agency through which or to which the delisted waste is being carried. GM-Arlington must provide this notification 60 days before commencing this activity.

B. What Happens if GM-Arlington Violates the Terms and Conditions?

If GM-Arlington violates the terms and conditions established in the exclusion, EPA will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, EPA will evaluate the need for enforcement activities on a case-by-case basis. EPA expects GM-Arlington to conduct the appropriate waste analysis and comply with the criteria explained above in paragraph (1) of the exclusion.

V. Public Comments

A. How Can I as an Interested Party Submit Comments?

EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD-C), Multimedia Planning and Permitting Division, Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Sam Barrett, Waste Section Manager, Texas Commission on Environmental Quality, 2309 Gravel Dr., Ft. Worth, TX 76118-6951. Identify your comments at the top with this regulatory docket number: "F-05-TXDEL-GM-Arlington." You may submit your comments

electronically to Youngmoo Kim at kim.youngmoo@epa.gov.

You should submit requests for a hearing to Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section (6PD-C), Multimedia Planning and Permitting Division, U. S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated

representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, EPA hereby certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 501 *et seq.*, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year.

When such a statement is required for EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector.

EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any

State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This order applies to any rule that EPA determines: (1) Is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has 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 Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian Tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have "meaningful and timely input" in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not

XII. National Technology Transfer and Advancement Act

This rule does not establish any new technical standards and thus, EPA has no need to consider the use of voluntary consensus standards in developing this proposed rule.

Executive Order 13132, entitled
“Federalism” (64 FR 43255, August 10,

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on 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, because it affects only one facility.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous Waste, Recycling, Reporting and record-keeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 11, 2005.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under § 260.20 and 260.22.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility/Address	Waste description
* General Motors Corporation Ar- lington, Arlington, TX.	* Wastewater Treatment Plant (WWTP) Sludge (EPA Hazardous Waste No. F019) generated at a maximum annual rate of 3,000 cubic yards per calendar year after [insert publication date of the final rule] will be dis- posed in a Subtitle D landfill. For the exclusion to be valid, GM-Arlington must implement a verification testing program that meets the fol- lowing paragraphs: (1) <i>Delisting Levels:</i> All leachable concentrations for those constituents must not exceed the following levels (mg/l for TCLP). (i) Inorganic Constituents: Antimony–0.49; Arsenic–0.022; Barium–100; Beryllium 0.998; Cadmium–0.136; Chromium–5; Cobalt–18.02; Lead–5; Mercury–0.19; Nickel–67.8; Selenium–1; Silver–5; Thallium–0.21; Tin– 540; Vanadium–50.6; Zinc–673. (ii) Organic Constituents: Acetone–171; Acetonitrile–399; Acrylonitrile–0.05; Allyl Chloride–0.12; Benzene– 0.43; Carbon Tetrachloride–0.3; Chlorobenzene–4.56; Chloroform–0.58; 1,1–Dichoroethane–9; 1,2– Dichloroethane 0.012; 1,1–Dichloroethylene–0.053; cis-1,2–Dichloroethylene–3.19; trans-1,2– Dichloroethylene–4.56; Ethylbenzene–31.9; Formaldehyde–257; Methyl Chloride–9.71; Methyl Ethyl Ke- tone–200; Methyl Isobutyl Ketone–137; Methyl Methacrylate–461; Methylene Chloride–0.216; N–Butyl Alco- hol–171; Styrene–4.56; 1,1,1,2–Tetrachloroethane–1.82; 1,1,2,2–Tetrachloroethane–3.29; Tetrachloroethane–0.23; Toluene–45.6; 1,1,1–Trichloroethane–9.11; 1,1,2–Trichloroethane–0.23; Trichloro- ethylene–0.23; Vinyl Acetate 183; Vinyl Chloride–0.022; Xylene(Total)–456; Bis(2–Ethylhexyl) Phthalate– 0.27; Butyl Benzyl Phthalate–69.6; o–Cresol–85.5; m–Cresol–85.5; p–Cresol–8.55; 1,4–Dichlorobenzene– 1.31; 2,4–Methylphenol–34.2; 2,4–Dinitrotoluene –0.049; Di–n–Octyl Phthalate–0.084; Hexachlorobenzene– 0.0016; Hexachlobutadiene–0.045; Hexachloroethane–0.74; Naphthalene–3.11; Nitrobenzene–0.86; Pentachlorophenol; 0.043; Pyridine–1.71; 2,4,5–Trichlorophenol–68.6; 2,4,6–Trichlorophenol–2.0. (2) <i>Waste Management:</i> (A) GM-Arlington must manage as hazardous all WWTP sludge it generates, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are non-hazardous. GM-Arlington can manage and dispose of the non-hazardous WWTP sludge according to all applicable solid waste regulations.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility/Address	Waste description
	(C) If constituent levels in a sample exceed any of the Delisting Levels set in paragraph (1), GM-Arlington can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, GM-Arlington must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). GM-Arlington must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance. (D) Upon completion of the Verification Testing described in paragraph (3)(A) and (B), as appropriate, and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), GM-Arlington may proceed to manage its WWTP sludge as non-hazardous waste. If subsequent Verification Testing indicates an exceedance of the Delisting Levels in paragraph (1), GM-Arlington must manage the WWTP sludge as a hazardous waste until two consecutive quarterly testing samples show levels below the Delisting Levels in paragraph (1). (3) <i>Verification Testing Requirements:</i> GM-Arlington must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods must meet Performance Based Measurement System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of GM-Arlington's F019 sludge meet the delisting levels in paragraph (1). If EPA judges the process to be effective under the operating conditions used during the initial verification testing, GM-Arlington may replace the testing required in paragraph (3)(A) with the testing required in paragraph (3)(B). GM-Arlington must continue to test as specified in paragraph (3)(A) until and unless notified by EPA in writing that testing in paragraph (3)(A) may be replaced by paragraph (3)(B). (A) <i>Initial Verification Testing:</i> After EPA grants the final exclusion, GM-Arlington must do the following: (i) Within 60 days of this exclusions becoming final, collect eight samples, before disposal, of the WWTP sludge. (ii) The samples are to be analyzed and compared against the Delisting Levels in paragraph (1) (iii) Within sixty (60) days after this exclusion becomes final, GM-Arlington will report initial verification analytical test data for the WWTP sludge, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in the samples of the WWTP sludge that do not exceed the levels set forth in paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion becomes effective, GM-Arlington can manage and dispose of the WWTP sludge according to all applicable solid waste regulations. (B) <i>Subsequent Verification Testing:</i> Following written notification by EPA, GM-Arlington may substitute the testing conditions in paragraph (3)(B) for paragraph (3)(A). GM-Arlington must continue to monitor operating conditions, and analyze two representative samples of the wastewater treatment sludge for each quarter of operation during the first year of waste generation. The samples must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the wastewater treatment sludge. The results are to be compared to the Delisting Levels in paragraph (1). (C) <i>Termination of Testing:</i> (i) After the first year of quarterly testing, if the Delisting Levels in paragraph (1) are met, GM-Arlington may then request that EPA not require quarterly testing. (ii) Following cancellation of the quarterly testing, GM-Arlington must continue to test a representative sample for all constituents listed in paragraph (1) annually. (4) <i>Changes in Operating Conditions:</i> If GM-Arlington significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as non-hazardous until the wastes meet the Delisting Levels set in paragraph (1) and it has received written approval to do so from EPA. (5) <i>Data Submittals:</i> GM-Arlington must submit the information described below. If GM-Arlington fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). GM-Arlington must: (A) Submit the data obtained through paragraph (3) to the Section Chief, Corrective Action and Waste Minimization Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, Mail Code (6PD-C) within the time specified. (B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Texas requests them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility/Address	Waste description
	As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) <i>Re-opener:</i> (A) If, anytime after disposal of the delisted waste, GM-Arlington possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in paragraph (1), GM-Arlington must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If GM-Arlington fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph(6)(D) or if no information is presented under paragraph(6)(D), the Division Director will issue a final written determination describing EPA's actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) <i>Notification Requirements:</i> GM-Arlington must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state regulatory agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Submit another one-time written notification, if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
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Notices

Federal Register

Vol. 70, No. 137

Tuesday, July 19, 2005

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 13, 2005

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

Farm Service Agency

Title: Standard Rules Tender Governing Motor Carrier Transportation.
OMB Control Number: 0560-0195.

Summary of Collection: Public Law 104-88 authorizes the Export Operation Division (EOD) to collect information to determine motor carrier compliance with Kansas City Commodity Office (KCCO) requirements, to determine eligibility of motor carriers to haul agricultural products for the USDA. A motor carrier shall complete KCCO's standard Rules Tender Governing Motor Carrier Transportation and file its rates with EOD. The Standard Rules Tender set the operating rules for the motor carrier to determine motor carrier compliance, accessorial charges, and the terms and conditions of carriage. Carriers are selected based on their rate and service levels. The information enables KCCO to evaluate the rates to obtain transportation services to meet domestic and export program needs.

Need and Use of the Information: FSA will collect information to establish the motor carrier's qualifications, and carriage rates and conditions. Without this information FSA and KCCO could not obtain transportation services to meet program requirements.

Description of Respondents: Business or other for-profit, Not-for-profit institutions; Federal government; State, local or tribal government.

Number of Respondents: 143.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 143.

Farm Service Agency

Title: Representations for CCC and FSA Loans and Authorization to File a Financing Statement.

OMB Control Number: 0560-0215.

Summary of Collection: The revised Article 9 of the Uniform Commercial Code deals with secured transaction for personal property. The revised Article 9 affects the manner in which the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA), as well as any other creditor, perfect and liquidate security interests in collateral. FSA operates several loan programs that are affected by the revision to Article 9 of the Uniform Commercial Code. Each of the programs requires that loans be secured with collateral. The security

interest is created and attaches to the collateral when: (1) value has been given, (2) the debtor has rights in the collateral, and (3) the debtor has authenticated a security agreement that provides a description of the collateral. FSA will collect information using form CCC-10. The information obtained on CCC-10 is needed to not only obtain authorization from loan applicants to file a financing statement without their signature, and to verify the name and location of the debtor.

Need and Use of the Information: The information that FSA collects will be used to gather or verify basic data regarding the applicant which is required on a financing statement and to obtain permission to file a financing statement prior to the execution of a security agreement. Without obtaining the information from loan applicants, CCC and FSA would be unable to perfect a security interest in collateral used to secure loans.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 105,500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 61,507.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05-14117 Filed 7-18-05; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 13, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and

clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Livestock Slaughter.

OMB Control Number: 0535-0005.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. General authority for data collection activities is granted under U.S. Code Title 7, Section 2204. This statute specifies the "The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists". Information from federally and non-federally inspected slaughter plants are used to estimate total red meat production.

Need and Use of the Information: NASS will use a survey to collect information on the number of head slaughtered plus live and dressed weights of cattle, calves, hogs and sheep. Accurate and timely livestock estimates provide USDA and the livestock industry with basic data to project future meat supplies and producer prices. Agricultural economists in both the public and private sectors use this information in economic analysis and research.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 1,600.

Frequency of Responses: Reporting: Weekly, Monthly.

Total Burden Hours: 550.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05-14118 Filed 7-18-05; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596-AB89

Grazing Permit Administration Handbook (FSH 2209.13), Chapters 10 (Term Grazing Permits) and 20 (Grazing Agreements)

AGENCY: Forest Service, USDA.

ACTION: Notice of interim directives, request for comment.

SUMMARY: The Forest Service has issued two (2) interim directives (IDs) to Forest Service Handbook 2209.13 establishing procedures and responsibilities for administering term grazing permits and grazing agreements (a specific type of term grazing permit). The intended effect of issuance of these IDs is to provide consistent overall guidance to Forest Service employees regarding term grazing permits and grazing agreements. The IDs add new provisions for administering term grazing permits and establish a consistent process regarding issuance of grazing agreements. The regulations at 36 CFR part 222 are not being changed. Public comment is invited and will be considered in development of the final direction.

DATES: Interim Directive no. 2209.13-2005-1 (Chapter 10) and Interim Directive no. 2209.13-2005-2 (Chapter 20) are effective July 19, 2005. Comments must be received in writing by October 17, 2005.

ADDRESSES: Send written comments by mail to USDA Forest Service, Attn: Director, Rangeland Management Staff, Mail Stop 1153, 1400 Independence Ave., SW., Washington, DC 20250-1153; by electronic mail to *RgeID@fs.fed.us*; or by facsimile to (202) 205-1096. If comments are sent by electronic means or by facsimile, the public is requested not to send duplicate comments via regular mail.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The agency cannot confirm receipt of comments.

The public may inspect comments received on these interim directives in the Rangeland Management Staff, 3rd Floor, South Wing, Yates Building, 14th and Independence Avenues, Northwest, Washington, DC, between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead to (202) 205-1460 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT:

Richard Lindenmuth, Rangeland Management Staff, USDA Forest Service, (202) 205-1458.

SUPPLEMENTARY INFORMATION: The Forest Service directives consist of the Forest Service Manual (FSM) and the Forest Service Handbook (FSH), which contain the agency's policies, practices, and procedures and serves as the primary basis for the internal management and control of programs and administrative direction to Forest Service employees. The directives for all agency programs are set out on the World Wide Web/Internet at <http://www.fs.fed.us/im/directives>.

The FSM contains legal authorities, objectives, policies, responsibilities, instructions, and guidance needed on a continuing basis by Forest Service line officers and primary staff to plan and executive programs and activities. The FSH is the principal source of specialized guidance and instruction for carrying out the policies, objectives, and responsibilities contained in the FSM.

The last major update to FSH 2209.13 was 1985. New legislation, litigation, and changing needs on-the-ground indicate the need to update and clarify existing policy. Six out of 7 chapters of FSM 2200 and all nine chapters of FSH 2209.13 are updated. Chapter 10, Term Grazing Permits, and Chapter 20, Grazing Agreements, contain most of the new direction. The Forest Service has determined neither of these chapters requires public notice and comment. However, due to the high degree of interest, they are being published as interim directives (ID) and made available for comment.

These IDs, along with other amended chapters, clarify and update existing policy. All clarifications and changes to existing policy are within the authority already delegated to the Chief of the Forest Service at 36 CFR part 222. Therefore, no changes, deletions, or additions are deemed necessary by the Forest Service to the regulations at 36 CFR part 222.

Highlights of Interim Directives; Forest Service Handbook; FSH 2209.13—Grazing Permit Administration Handbook*Chapter 10—Term Grazing Permits*

This chapter describes the procedures to properly issue, modify, suspend, and cancel term grazing permits. A term grazing permit is obtained through prior permitted use (existing permit expires), sale of base property or permitted livestock, or grant authority. Section 16.3 adds a new provision explaining the contents of a notice of non-compliance letter and when it should be issued, and it adds a new provision establishing uniform suspension and cancellation guidelines. Section 17.2 expands the maximum period of nonuse for personal convenience from 3 to 4 years.

Chapter 20—Grazing Agreements

Grazing agreements are a specific type of term grazing permit used on the national grasslands and national forests. This chapter provides direction on administering grazing agreements. Section 21.1 establishes a consistent process to waive Forest Service term grazing permits in favor of a grazing association-issued term grazing permit. Section 21.2 establishes a consistent process to waive a grazing association-issued term grazing permit in favor of a Forest Service term grazing permit. Section 22 establishes standard forms for grazing agreements on both national grasslands and national forests. Section 24.11 establishes a consistent 7-year limit policy for leasing of property to satisfy base property ownership qualification requirements for association-issued term grazing permits on national grasslands. Section 24.12 establishes a consistent 3-year limit policy for share livestock agreements to satisfy livestock ownership qualification requirements for association-issued term grazing permits on national grasslands.

Regulatory Certifications*Regulatory Impact*

This notice has been reviewed under USDA procedures and Executive Order (E.O.) 12866, Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that it is substantive, nonsignificant. The ID's would not have an annual effect of \$100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. The ID's would not interfere with an action taken or planned by another agency nor raise

new legal or policy issues. Finally, the ID's would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs.

Moreover, the ID's have been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No direct or indirect financial impact on small businesses or other entities has been identified. Therefore, it is hereby certified that these ID's will not have a significant economic impact on a substantial number of small entities as defined by the act.

Environmental Impact

These ID's provide detailed direction to agency employees necessary to administer term grazing permits and grazing agreements. Section 31.12 of Forest Service Handbook 1909.15 (57 FR 43208; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." The agency's conclusion is that these ID's fall within this category of actions and that no extraordinary circumstances exist as currently defined that require preparation of an environmental assessment or an environmental impact statement.

No Takings Implications

These ID's have been analyzed in accordance with the principles and criteria contained in Executive Order 12360, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that they would not pose the risk of a taking of private property as they are limited to the establishment of administrative procedures.

Energy Effects

These ID's have been analyzed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that they do not constitute a significant energy action as defined in the Executive order.

Civil Justice Reform

These ID's have been reviewed under Executive Order 12988, Civil Justice Reform. These ID's will direct the work

of Forest Service employees and are not intended to preempt any State and local laws and regulations that might be in conflict or that would impede full implementation of these directives. The directives would not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands and would not require the institution of administrative proceedings before parties may file suit in court challenging their provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the effects of these ID's on State, local, and tribal governments, and on the private sector have been assessed and do not compel the expenditure of \$100 million or more by any State, local, or Tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Federalism

The agency has considered these ID's under the requirements of Executive Order 13132, Federalism. The agency has made a preliminary assessment that the ID's conform with the federalism principles set out in this Executive order; would not impose any significant compliance costs on the States; and would 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. Moreover, these ID's address term grazing permits and grazing agreements on national forests and grasslands, which do not directly affect the States. Based on comments received on these ID's, the agency will consider if any additional consultation will be needed with State and local governments prior to adopting final directives.

Consultation and Coordination With Indian Tribal Governments

These ID's do not have tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore, advance consultation with Tribes is not required.

Controlling Paperwork Burdens on the Public

These ID's do not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, impose no

paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

Conclusion

Six out of 7 chapters of FSM 2200 and all 9 chapters of FSH 2209.13 are updated. Chapter 10, Term Grazing Permits, and Chapter 20, Grazing Agreements, contain most of the new direction. The agency has elected to issue chapters 10 and 20 as interim directives, making them effective immediately. An interim directive expires 18 months from issuance and may be reissued only once for a total duration of 36 months. Thereafter, the direction must be incorporated into an amendment or allowed to expire. Both the regular amendments and the interim directives are being published simultaneously in order for reviewers to synthesize the context of each amended directive in relation to the total package.

The Forest Service is committed to providing adequate opportunities for the public to comment on administrative directives that are of substantial public interest or controversy, as provided in the regulations at 36 CFR part 216. Because it is important to provide Forest Service units with updated guidance and direction in a comprehensive integrated package, the agency is issuing these ID's and making them effective immediately. However, pursuant to 36 CFR 216.7, the Forest Service is also requesting public comment on these ID's.

All comments will be considered in the development of final directives. The full text of these Manuals and Handbook references area available on the World Wide Web at <http://www.fs.fed.us/im/directives>.

Single paper copies are available upon request from the address and phone numbers listed in the **ADDRESSES** section of this notice, as well as, from the nearest Regional Office, the location of which are also available on the Washington Office headquarters home page on the World Wide Web at <http://www.fs.fed.us>.

Dated: June 30, 2005.

Sally Collins,

Associate Chief of the Forest Service.

[FR Doc. 05-14147 Filed 7-18-05; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 991215339-5181-18]

National Technical Assistance: Research and Evaluation Program

AGENCY: Economic Development Administration (EDA) Department of Commerce (DOC).

ACTION: Notice and request for proposals.

SUMMARY: The mission of EDA is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Through the Research and Evaluation program, EDA will work towards fulfilling its mission by funding research and technical assistance projects to promote competitiveness and innovation in urban and rural regions throughout the United States and its territories. By working in conjunction with its research partners, EDA will help States, local and tribal governments and community-based organizations to achieve their highest economic potential. Pursuant to its Research and Evaluation program, EDA is soliciting competitive proposals for the following project: Addressing Competitiveness and Innovation in Rural U.S. Regions—Developing and Analyzing Rural Clusters of Innovation and Linking Rural and Metropolitan Regions.

DATES: Proposals for funding pursuant to this competitive solicitation must be received by the EDA Headquarters representative listed in the **ADDRESSES** section of this notice no later than August 18, 2005 at 4 p.m. (e.d.t.). Proposals received after 4 p.m. (e.d.t.) on August 18, 2005 will not be considered for funding. By September 2, 2005, EDA will notify proponents whether they will be given further funding consideration and will invite the successful proponent to submit a formal application for EDA investment assistance.

ADDRESSES: Proposals submitted pursuant to this competitive solicitation may be (a) E-mailed to W. Kent Lim at klim1@eda.doc.gov; (b) hand-delivered to: W. Kent Lim, Economic Development Administration, Room 1874, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; or (c) mailed to: W. Kent Lim, Economic Development Administration, Room 7015, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington,

DC 20230. Proponents are encouraged to submit proposals by e-mail. EDA will not accept proposals submitted by facsimile. Please note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce is subject to extensive security screening.

FOR FURTHER INFORMATION CONTACT: Please contact W. Kent Lim at (202) 482-6225 or via e-mail at the address listed above. The text of the full FFO announcement may also be accessed at EDA's Internet Web site: <http://www.eda.gov> and at Grants.gov: <http://www.grants.gov>.

SUPPLEMENTARY INFORMATION:

Electronic Access: The full FFO announcement for this competitive solicitation is available at EDA's Web site, <http://www.eda.gov>, and at Grants.gov at <http://www.grants.gov>.

Funding Availability: EDA may use funds appropriated under Public Law 108-447 for the Research and Evaluation program. These funds are available until expended. EDA expects that the successful proposal for this project will require an EDA investment of between \$250,000 and \$500,000. The EDA award under this competitive solicitation will be in the form of a grant between EDA and the successful proponent.

Statutory Authority: The statutory authority for the Research and Evaluation program is the Public Works and Economic Development Act of 1965, as amended ((Pub. L. 89-136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments made by the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108-373) (PWEDA).

CFDA: 11.312 Economic Development—Research and Evaluation Program.

Eligibility: Eligible applicants for, and eligible recipients of, EDA financial assistance under the Research and Evaluation program include: Economic Development Districts; Indian tribes; States; cities or other political subdivision of a State, including a special purpose unit of State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; institutions of higher education or consortia of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a State; private individuals; and for-profit

organizations. See 42 U.S.C. 3122 and 13 CFR 300.2.

Cost Sharing Requirements: Section 204(a) of PWEDA (42 U.S.C. 3144) provides that the maximum EDA investment rate for a project must not exceed the sum of fifty (50) percent of the overall project cost, plus an additional thirty (30) percent of the overall project cost that is based on the "relative needs" of the region in which the project will be located. For projects under the Research and Evaluation program, the Assistant Secretary of Commerce for Economic Development (the "Assistant Secretary") has the discretion to establish a maximum EDA investment rate of up to one hundred (100) percent of the overall project cost where the project merits and is not otherwise feasible without an increase to the EDA investment rate. While cash contributions are preferred, the project's matching funds requirement (*i.e.*, the non-Federal share) may consist of in-kind contributions, fairly evaluated by EDA, such as contributions of space, equipment and services. See Section 204(b) of PWEDA (42 U.S.C. 3144) and 13 CFR 301.4(a). In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements. *Id.* Additionally, the non-Federal share of the project's costs must be committed to the project, available as needed and not conditioned or encumbered in any way that preclude its use consistent with the requirements of the EDA investment assistance. See 13 CFR 316.17.

Intergovernmental Review: Proposals and applications under the Research and Evaluation program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Evaluation and Selection Procedures:

A. Review Criteria and Selection Procedures

To apply for an award under this request, an eligible applicant must submit a proposal to EDA during the specified timeframe provided in the **DATES** section of this notice. Proposals that are not timely submitted or that do not meet all items required or that exceed the page limitations set forth in this competitive solicitation will be considered non-responsive and will not be considered by the review panel. Proposals that meet all of the technical requirements set forth in this competitive solicitation will be evaluated by a review panel comprised of at least three members, all of whom will be full-time Federal employees. See 13 CFR 304.1(b), 304.2(a). The review

panel will evaluate those proposals meeting the technical requirements of this competitive solicitation and rate and rank them using the following criteria of approximate equal weight:

1. General evaluation criteria set forth in 13 CFR 304.2;

2. Supplemental evaluation criteria (Investment Policy Guidelines) set forth in Section B. below; and the

3. Cost to the Federal Government. The Assistant Secretary is the Selecting Official and will normally follow the recommendation of the review panel. However, the Assistant Secretary may not make any selection, or he may substitute one of the lower-rated proposals, if he determines that it better meets the overall objectives of PWEDA.

B. Supplemental Evaluation Criteria: Investment Policy Guidelines

EDA's mission is to lead the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Accordingly, all potential EDA investments will be analyzed using the following five Investment Policy Guidelines, which constitute supplemental evaluation criteria of approximate equal weight and which further define the general evaluation criteria provided at 13 CFR 304.2:

1. Be market-based and results driven. An investment will capitalize on a region's competitive strengths and will positively move a regional economic indicator measured on EDA's Balanced Scorecard, such as: an increased number of higher-skill, higher-wage jobs; increased tax revenue; or increased private sector investment.

2. Have strong organizational leadership. An investment will have strong leadership, relevant project management experience, and a significant commitment of human resources talent to ensure a project's successful execution.

3. Advance productivity, innovation, and entrepreneurship. An investment will embrace the principles of entrepreneurship, enhance regional clusters, and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

4. Look beyond the immediate economic horizon, anticipate economic changes, and diversify the local and regional economy. An investment will be part of an overarching, long term comprehensive economic development

strategy that enhances a region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters, or attracting new regional economic drivers.

5. Demonstrate a high degree of commitment by exhibiting: (a) High levels of local government or non-profit matching funds and private sector leverage; (b) clear and unified leadership and support by local elected officials; and (c) strong cooperation between the business sector, relevant regional partners and local, State and Federal Governments.

Announcement and Award Dates: By September 2, 2005, EDA will notify proponents whether they will be given further funding consideration and will invite the successful proponent to submit a formal application for EDA investment assistance. The proponent invited by EDA to submit a formal application should expect to receive funding for its project by September 30, 2005; however, there is no guarantee that the proponent will receive funding.

Supplemental Notice

EDA's reauthorization legislation was signed into law on October 27, 2004, with amendments made to PWEDA through the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108-373). Since reauthorization, EDA is in the process of conducting a full scale review and revision of its regulations. When revised regulations are published, EDA may publish a supplemental notice in the **Federal Register** in order to provide applicants with updated information on the revised regulations.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of December 28, 2004 (69 FR 78389) is applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Form ED-900A has been approved by OMB under the control number 0610-0094. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of

information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/Regulatory Flexibility Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this rule concerning grants, benefits and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 13, 2005.

Sandy Baruah,

Chief of Staff.

[FR Doc. 05-14158 Filed 7-18-05; 8:45 am]

BILLING CODE 3510-24-P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

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

EFFECTIVE DATE: July 19, 2005.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings completed between January 1, 2005, and March 31, 2005. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of March 31, 2005, as well as scope rulings inadvertently omitted from prior published lists. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Greg Kalbaugh, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482-0656 or (202) 482-3693.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings. See 19 CFR 351.225(o). Our most recent "Notice of Scope Rulings" was published on May 10, 2005. See 70 FR 24533. The instant notice covers all scope rulings and anticircumvention determinations completed by Import Administration between January 1, 2005, and March 31, 2005, inclusive. It also lists any scope or anticircumvention inquiries pending as of March 31, 2005, as well as scope rulings inadvertently omitted from prior published lists. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between January 1, 2005, and March 31, 2005:

Japan

A-588-854: Certain Tin Mill Products from Japan

Requestor: Metal One America, Inc.; certain electrolytic tin plate and tin free steel products, made in Colombia by Hojalata y Laminados S.A. from Japanese single-reduced black plate and double-reduced black plate, are excluded from the scope of the antidumping duty order; January 7, 2005.

People's Republic of China

A-570-506: Porcelain-On-Steel Cooking Ware from the People's Republic of China

Requestor: Taybek International; the Pro Popper professional popcorn popper is within the scope of the antidumping duty order; January 4, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Illuminations Stores, Inc.; two candles (item numbers 1050-0593 and 1050-0594) and two candle sets (item numbers 1050-0591 and 1050-0592) are within the scope of the antidumping duty order; January 6, 2005.

A-570-881: Malleable Cast Iron Pipe Fittings from the People's Republic of China

Requestors: 1) Nitek Electronics, Inc. and Sango International, L.P., and 2) A.Y. McDonald Mfg. Co.; meter swivels and meter nuts are within the scope of the antidumping duty order; January 11, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Holly Lobby Stores, Inc.; "Fall Floating Leaf Candles" and

"Pumpkin Floating Candles" are within the scope of the antidumping duty order. "Floating Rose Candles" are excluded from the scope of the antidumping duty order; January 14, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Coppersmith Inc., on behalf of Specialty Merchandise Corp.; "Xmas JOY" candles are within the scope of the antidumping duty order; January 14, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Noteworthy, a division of Papermates, Inc.; "Floater Flower Candle" and "Rose Pillar Candle" are within the scope of the antidumping duty order; January 14, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Abrim Enterprises, Inc.; "Easter Egg/Flower Basket," "Square-M Angel," "Garlic-L," "Easter Egg-E," "Strobile-M," "Halloween Skull-A," "Tulip Bud-L," "Birthday Cake-S," "Censer," and "X-Mas Tree-A" candles are within the scope of the antidumping duty order. "Snowman (Wife)" and "Snowman (Husband)" candles are excluded from the scope of the antidumping duty order; January 19, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Kathryn Beich, Inc.; "Jewel," "Red Rose," and "Polka Dot" candles are within the scope of the antidumping duty order; January 19, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Dollar Tree Stores, Inc.; one candle (molded "orchid stem" candle, SKU 806827) is excluded from the scope of the antidumping duty order because it is an identifiable object, while sixteen candles are within the scope of the antidumping duty order; January 26, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Garden Ridge; one candle (item number GRI/CXF112) is excluded from the scope of the antidumping duty order because it is associated with a recognized holiday, while ten candles are within the scope of the antidumping duty order; February 2, 2005.

A-570-882: Brown Aluminum Oxide from the People's Republic of China

Requestor: Cometals Division of Commercial Metals Company; black aluminum oxide is excluded from the scope of the antidumping duty order; February 7, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Pei Eichel, Inc.; the three styles of "Archipelago Bombay Sleeve" candles (PO numbers 9904234, 9904235, and 9904236) are within the scope of the antidumping duty order; February 8, 2005.

A-570-891: Hand Trucks and Certain Parts Thereof from the People's Republic of China

Requestor: Vertex International, Inc.; certain components of its Garden Cart, if imported separately, are within the scope of the antidumping duty order; February 15, 2005.

A-570-827: Cased Pencils from the People's Republic of China

Requestor: Rich Frog Industries, Inc.; certain decorated wooden gift pencils are within the scope of the antidumping duty order; February 18, 2005.

A-570-827: Cased Pencils from the People's Republic of China

Requestor: Target Corporation; the RoseArt Clip N' Color is excluded from the scope of the antidumping duty order; March 5, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Maredy Candy Company; all three candles ("heart," "star," and "snowflake" candles) are within the scope of the antidumping duty order; March 7, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Target Corporation; two candles ("leaf," and "cranberry ball") and set of "stone" candles are within the scope of the antidumping duty order; March 9, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Sears; the "wrapped present garden" candle set is within the scope of the antidumping duty order; March 10, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: J.C. Penney Purchasing Corp.; the "wicker lamp shade" candle (item number 21075) is within the scope

of the antidumping duty order; March 10, 2005.

Multiple Countries

A-475-820: Stainless Steel Wire Rod from Italy; C-475-821: Stainless Steel Wire Rod from Italy; A-588-843: Stainless Steel Wire Rod from Japan; A-469-805: Stainless Steel Wire Rod from Spain; A-469-807: Stainless Steel Wire Rod from Spain; A-583-828: Stainless Steel Wire Rod from Taiwan; A-533-810: Certain Stainless Steel Wire Rod from India; A-588-833: Stainless Steel Wire Rod from India; A-533-808: Stainless Steel Wire Rod from India; C-469-004: Stainless Steel Wire Rod from Spain

Requestor: Ishar Bright Steel Ltd.; certain stainless steel bar that is manufactured in the United Arab Emirates from stainless steel wire rod imported from multiple subject countries is excluded from the scope of the antidumping and/or countervailing duty orders from India, Italy, Japan, Spain and Taiwan; February 7, 2005.

Anticircumvention Determinations Completed Between January 1, 2005, and March 31, 2005:

None

Scope Inquiries Terminated Between January 1, 2005, and March 31, 2005:**People's Republic of China***A-570-504: Petroleum Wax Candles from the People's Republic of China*

Requestor: Reckitt Benckiser Inc. withdrew its request for a scope ruling; terminated January 18, 2005.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Industrial Raw Materials Corp.; "paraffin wax plugs" request improperly filed; terminated February 14, 2005.

Scope Inquiries Pending as of March 31, 2005:**Brazil***A-351-832; C-351-833: Carbon and Certain Alloy Steel Wire Rod from Brazil*

Requestors: Companhia Siderurgica Belgo Mineira Participacao Industria e Comercio S.A. and B.M.P. Siderurgica S.A.; whether certain grade 1080 tire cord quality wire rod and tire bead quality wire rod (1080 TCBQWR) is within the scope of the order; requested March 29, 2004.

India*A-533-808; A-533-810: Certain Stainless Steel Wire Rod from India; Certain Stainless Steel Bar from India*

Requestor: Mukand Ltd.; whether stainless steel bar that is manufactured in the United Arab Emirates from stainless steel wire rod imported from India is within the scope of the antidumping duty orders on stainless steel wire rod and stainless steel bar from India; requested May 14, 2003.

Republic of Korea*C-580-851: Dynamic Random Access Memory Semiconductors from Korea*

Requestor: Cisco Systems, Inc.; whether removable memory modules placed on motherboards that are imported for repair or refurbishment are within the scope of the countervailing duty order; requested December 29, 2004.

People's Republic of China*A-570-504: Petroleum Wax Candles from the People's Republic of China*

Requestor: New Spectrum; whether floating candles, assorted figurine candles, "ball of gold rope" candle, Christmas ornament candles, various candle sets, scented candles, and citronella "garden torch" candles are within the scope of the antidumping duty order; requested March 29, 2002.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Home Interiors & Gifts, Inc.; whether a "rose blossom" candle, "sunflower" floating candles, "Americana heart" floating candles, "baked apple" tea lights, and vanilla tea lights are within the scope of the antidumping duty order; requested June 4, 2002.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Target Corporation; whether snowball candles and sets are within the scope of the antidumping duty order; requested February 5, 2003.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Crazy Mountain Imports; whether various candles with Christmas ornaments are within the scope of the antidumping duty order; requested February 19, 2003.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Access Business Group; whether various "bowl" and jar candles are within the scope of the antidumping duty order; requested March 25, 2003.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Home & Garden Party; whether two "leaf" candles are within the scope of the antidumping duty order; requested September 30, 2003.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Rokeach Foods; whether a "Yahrzeit" (or "day of memory") candle is within the scope of the antidumping duty order; requested April 22, 2004.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Pier 1 Imports, Inc.; whether 13 models of candles are within the scope of the antidumping duty order; requested May 24, 2004.

A-570-827: Cased Pencils from the People's Republic of China

Requestor: Fiskars Brands, Inc.; whether certain compasses are within the scope of the antidumping duty order; requested September 10, 2004.

A-570-803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Olympia Group Inc.; whether cast tampers are within the scope of the antidumping duty order; requested September 24, 2004.

A-570-886: Polyethylene Retail Carrier Bags from the People's Republic of China

Requestor: Dimensions Trading, Inc.; whether polyethylene sample bags are within the scope of the antidumping duty order; requested October 13, 2004.

A-570-803: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China

Requestor: Olympia Group Inc.; whether pry bars, with a bar length under 18 inches, are within the scope of the antidumping duty order; requested November 4, 2004.

A-570-502: Iron Construction Castings from the People's Republic of China

Requestor: A.Y. McDonald Mfg. Co.; whether certain cast iron articles (meter box frames, covers, extension rings; meter box bases, upper bodies, lids), if imported separately, are within the scope of the antidumping duty order; requested November 16, 2004.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: Rokeach Foods; whether Chanukah candles are within the scope

of the antidumping duty order; requested January 15, 2005.

A-570-868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Spencer Gifts LLC (Spencer); whether "butterfly chairs" are within the scope of the antidumping duty order; requested March 21, 2005.

Russian Federation*A-821-802: Antidumping Suspension Agreement on Uranium*

Requestor: USEC, Inc. and its subsidiary, United States Enrichment Corporation; whether enriched uranium located in Kazakhstan at the time of the dissolution of the Soviet Union is within the scope of the order; requested August 6, 1999.

A-821-819: Magnesium Metal from the Russian Federation

Requestor: Leeds Specialty Alloys (LSA); whether a type of magnesium master alloy is within the scope of the antidumping duty order; requested March 8, 2005.

Vietnam*A-552-801: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*

Requestor: Piazza Seafood World LLC; whether certain basa and tra fillets from Cambodia which are a product of Vietnam are within the scope of the antidumping duty order; requested May 12, 2004.

Anticircumvention Inquiries Pending as of March 31, 2005:**People's Republic of China***A-570-504: Petroleum Wax Candles from the People's Republic of China*

Requestor: National Candle Association; whether imports of palm and vegetable-based wax candles from the PRC can be considered later-developed merchandise which is now circumventing the antidumping duty order; requested October 8, 2004.

A-570-504: Petroleum Wax Candles from the People's Republic of China

Requestor: National Candle Association; whether imports of palm and vegetable-based wax candles from the PRC can be considered a minor alteration to the subject merchandise for purposes of circumventing the antidumping duty order; requested October 12, 2004.

Vietnam*A-552-801: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*

Requestor: Catfish Farmers of America and certain individual U.S. catfish processors; whether imports of frozen fish fillets from Cambodia made from live fish sourced from Vietnam, and falling within the scope of the antidumping duty order, are circumventing the antidumping duty order; requested August 20, 2004.

Scope Rulings Inadvertently Omitted from Prior Published Lists:**Russian Federation***A-8210811: Agreement Suspending the Antidumping Investigation on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*

Requestor: Committee for Fair Ammonium Nitrate Trade; 33-3-0 fertilizer is included within the suspension agreement; March 11, 2004.

Interested parties are invited to comment on the completeness of this list of pending scope and anti-circumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o) of the Department's regulations.

Dated: July 13, 2005.

Susan Kubbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5-3837 Filed 7-18-05; 8:45 am]

BILLING CODE: 3510-DS-S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS**Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China**

July 15, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton and man-made fiber curtains and drapery (Category 369 Part/666 Part).

SUMMARY: On June 22, 2005, the Committee received a request from the

American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, and UNITE HERE requesting that the Committee limit imports from China of cotton and man-made fiber curtains and drapery (Category 369 Part/666 Part). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be taken on imports of such curtains and drapery. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such curtains and drapery are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by August 18, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Report of the Working Party on the Accession of China to the World Trade Organization (WTO) provides that, if a WTO Member, such as the United States, believes that imports of Chinese origin textile and apparel products are, "due to market disruption, threatening to impede the orderly development of trade in these products," it may request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing (1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption. Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made.

The Committee has published procedures (the Procedures) it follows

in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On June 22, 2005, the Committee received a request that an Accession Agreement textile and apparel safeguard action be taken on imports from China of cotton and man-made fiber curtains and drapery (Category 369 Part/666 Part). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is available at <http://otexa.ita.doc.gov/Safeguard05.htm>.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such curtains and drapery are, due to market disruption, threatening to impede the orderly development of trade in this product.

Comments may be submitted by any interested person. Comments must be received no later than August 18, 2005. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked "business confidential," will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan

Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee expects to make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If, however, the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin cotton and man-made fiber curtains and drapery are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption in accordance with the Accession Agreement and the Committee's procedures.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05-14274 Filed 7-18-05; 8:45 am]

BILLING CODE 3510-DS

DEPARTMENT OF DEFENSE

Office of the Secretary; Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 18, 2005.

Title, Form, and OMB Number: DoD Building Pass Application; DD Form 2249; OMB Number 0704-0328.

Type of Request: Extension.
Number of Respondents: 120,000.
Responses Per Respondent: 1.
Annual Responses: 120,000.
Average Burden Per Response: 6 minutes.

Annual Burden Hours: 12,000.

Needs and Uses: This information collection requirement is used by officials of Security Services, Pentagon Force Protection Agency, Washington Headquarters Services, to maintain a listing of personnel who are authorized a DoD Building Pass. The information

collected from the DD Form 2249 is used to verify the need for and to issue a DoD Building Pass to DoD personnel, other authorized U.S. Government personnel, and DoD consultants and experts who regularly work in or require frequent and continuing access to DoD owned or occupied buildings in the National Capital Region.

Affected Public: Individuals or households; business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Lewis Oleinick. Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings. Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202-4326.

Dated: July 8, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-14101 Filed 7-18-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 18, 2005.

Title and OMB Number: DoD Patient Safety Survey; OMB Number 0720-TBD.

Type of Request: New.

Number of Respondents: 14,022.

Responses per Respondent: 1.

Annual Responses: 14,022.

Average Burden per Response: 10 minutes.

Annual Burden Hours: 2,384.

Needs and Uses: The 2001 National Defense Authorization Act contains specific sections addressing patient safety in military and veterans health care systems. This legislation states that the Secretary of Defense shall establish

a patient care error reporting and management system to study occurrences of errors in patient care and that one of the purposes of the system should be "To identify systemic factors that are associated with such occurrences" and "To provide for action to be taken to correct the identified systemic factors" (Sec. 754, items b2 and b3). In addition, the legislation states that the Secretary shall "Continue research and development investments to improve communication, coordination, and team work in the provision of health care" (Sec. 754, item d4).

In its ongoing response to this legislation, DoD plans to implement a Web-based patient safety culture survey to a census of all staff working in Army, Navy, and Air Force Military Health System (MHS) facilities in the U.S. and internationally, including Military Treatment Facility (MTF) hospitals as well as ambulatory and dental services. The survey obtains MHS staff opinions on patient safety issues such as teamwork, communications, medical error occurrence and response, error reporting, and overall perceptions of patient safety. The purpose of the survey is to assess the current status of patient safety in MHS facilities as well as to provide baseline input for assessment of patient safety improvement over time. Survey results will be prepared at the facility and Service levels and MHS overall.

Affected Public: Federal government; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202-4326.

Dated: July 8, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-14102 Filed 7-18-05; 8:45 am]

BILLING CODE 5001-06-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0074]

Federal Acquisition Regulation; Submission for OMB Review; Contract Funding—Limitation of Costs/Funds

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 has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning limitation of costs/funds. A request for public comments was published in the **Federal Register** at 70 FR 28516 on May 18, 2005. No comments were received.

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 August 18, 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: Jeremy F. Olson, Contract Policy Division, GSA (202) 501-3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal cost-reimbursement contracts are required to notify the contracting officer in writing whenever they have reason to believe—

(1) The costs the contractors expect to incur under the contracts in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost of the contracts; or

(2) The total cost for the performance of the contracts will be greater or substantially less than estimated. As a part of the notification, the contractors must provide a revised estimate of total cost.

B. Annual Reporting Burden

Respondents: 53,456.

Responses Per Respondent: 1.

Annual Responses: 53,456.

Hours Per Response: .5.

Total Burden Hours: 26,728.

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. 9000-0074, Contracting Funding—Limitation of Costs/Funds, in all correspondence.

Dated: June 27, 2005

Julia B. Wise

Director, Contract Policy Division.

[FR Doc. 05-13251 Filed 7-18-05; 8:45 am]

BILLING CODE 6820-EP-S

extension of a currently approved information collection requirement concerning payments. A request for public comments was published in the **Federal Register** at 70 FR 28515 on May 18, 2005. No comments were received.

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 August 18, 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. Please cite OMB Control No. 9000-0070, Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Contract Policy Division, GSA (202) 501-3221.

SUPPLEMENTARY INFORMATION:**A. Purpose**

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (see FAR 52.232-1 through 52.232-11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

Respondents: 80,000.

Responses Per Respondent: 120.

Annual Responses: 9,600,000.

Hours Per Response: .025.

Total Burden Hours: 240,000.

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. 9000-0070, Payments, in all correspondence.

Dated: June 27, 2005

Julia B. Wise

Director, Contract Policy Division.

[FR Doc. 05-13253 Filed 7-18-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0073]

**Federal Acquisition Regulation;
Submission for OMB Review; Advance
Payments**

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 has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning advance payments. A request for public comments was published in the **Federal Register** at 70 FR 28516 on May 18, 2005. No comments were received.

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 August 18, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information,

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

[OMB Control No. 9000-0070]

**Federal Acquisition Regulation;
Submission for OMB Review;
Payments**

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 has submitted to the Office of Management and Budget (OMB) a request to review and approve an

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:

Jeremy Olson, Contract Policy Division, GSA (202) 501-3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Advance payments may be authorized under Federal contracts and subcontracts. Advance payments are the least preferred method of contract financing and require special determinations by the agency head or designee. Specific financial information about the contractor is required before determinations by the agency head or designee. Specific financial information about the contractor is required before such payments can be authorized (see FAR Subpart 32.4 and 52.232-12). The information is used to determine if advance payments should be provided to the contractor.

B. Annual Reporting Burden

Respondents: 500.

Responses Per Respondent: 1.

Annual Responses: 500.

Hours Per Response: 1.

Total Burden Hours: 500.

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. 9000-0073, Advance Payments, in all correspondence.

Dated: June 27, 2005

Julia B. Wise,

Director, Contract Policy Division.

[FR Doc. 05-13258 Filed 7-18-05; 8:45 am]

BILLING CODE 6820-EP-S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ DEIR) for Proposed Future Permit Actions Under Section 404 of the Clean Water Act for the Newhall Ranch Specific Plan and Associated Facilities Along Portions of the Santa Clara River and Its Side Drainages, and Development of a Candidate Conservation Agreement with Assurances (CCAA) for the San Fernando Valley Spineflower, in Los Angeles County, California, With the U.S. Fish and Wildlife Service

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Revised Notice of Intent.

SUMMARY: The project proponent and landowner, The Newhall Land and Farming Company (Newhall Land), has requested a long-term Clean Water Act Section 404 permit from the Corps of Engineers for facilities associated with the Newhall Ranch Specific Plan. The action is necessary to facilitate buildout of the Specific Plan. The effect will be to authorize the construction of bridges, flood control structures, and to grade and fill certain side drainages for roads and buildings. The reason for this revised notice of intent (NOI) is because the project proponent's proposed action has been expanded to include development of a voluntary CCAA between Newhall Land and the U.S. Fish and Wildlife Service (USFWS) to specify spineflower preserve locations, manage spineflower habitat, and to authorize future take of spineflower, in the event it becomes federally listed under the federal Endangered Species Act as threatened or endangered, involving three properties: Newhall Ranch, Valencia Commerce Center, and Entrada. The Corps of Engineers intends to prepare a Draft Environmental Impact Statement (DEIS) to evaluate the potential effects of the proposed action on the environment. To eliminate duplication of paperwork, the Corps of Engineers intends to coordinate the DEIS with the Draft Environmental Impact Report (DEIR) being prepared by the California Department of Fish and Game. The joint document will meet the requirements of the National Environmental Policy Act (NEPA) as well as enable the Corps to analyze the project pursuant to the 404(b)(1) Guidelines and assess potential impacts on various public interest factors.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and Draft EIS/EIR can be answered by Dr. Aaron O. Allen, Corps Project Manager, at (805) 585-2148. Comments shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Ventura Field Office, ATTN: File Number 2003-01264-AOA, 2151 Alessandro Drive, Suite 110, Ventura, CA 93001. Alternatively, comments can be e-mailed to: Aaron.O.Allen@usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. *Project Site and Background Information.* The Newhall Ranch site is located in northern Los Angeles County and encompasses approximately 12,000 acres. The Santa Clara River and State Route 126 traverse the northern portion of the Specific Plan area.

The river extends approximately 5.5 miles east to west across the site. On March 27, 2003, the Los Angeles County Board of Supervisors approved the Specific Plan, which establishes the general plan and zoning designations necessary to develop the site with residential, commercial, and mixed uses over the next 20 to 30 years. The Newhall Ranch Specific Plan also includes a Water Reclamation Plant at the western edge of the project area. Individual projects, such as residential, commercial, and industrial developments, roadways, and other public facilities would be developed over time in accordance with the development boundaries and guidelines in the approved Specific Plan. Many of these developments would require work in and adjacent to the Santa Clara River and its side drainages ("waters of the United States").

Newhall Land would develop most of the above facilities. However, other entities could construct some of these facilities using the approvals or set of approvals issued to Newhall Land. The proposed Section 404 permit would also include routine maintenance activities to be carried out by Los Angeles County Department of Public Works using the Section 404 permit issued to Newhall Land. Any party utilizing a Section 404 permit issued to Newhall Land would be bound by the same conditions in the Section 404 permit.

The CCAA area includes Newhall Ranch and two other areas adjacent to Newhall Ranch, the Valencia Commerce Center and Entrada areas. The Valencia Commerce Center is a partially built out commercial/industrial center located east of Newhall Ranch and north of State Route 126. Entrada is a proposed residential development located east of

Newhall Ranch and south of Magic Mountain Parkway.

Under the Specific Plan, Newhall Land and Farming has applied to Los Angeles County for tentative tract (subdivision) maps for portions of the Specific Plan area, Valencia Commerce Center, and Entrada. Los Angeles County is currently processing those applications, including the preparation of project-level Environmental Impact Reports for these areas.

2. *Proposed Action.* Newhall Land has identified various activities associated with the Newhall Ranch Project that would require Corps permitting. Many of the proposed activities would require a 404 permit because the activities would affect the riverbed or banks within the jurisdictional limits of the Corps in San Martinez Grande, Chiquito, Potrero, and Long canyons, and smaller drainages with peak flows of less than 2,000 cubic feet per second, as well as the Santa Clara River. These activities are listed and described in further detail below:

- Bank protection to protect land development projects along watercourses (including buried soil cement, ungrouted riprap, and gunite lining);
- Drainage facilities such as storm drains or outlets and partially lined open channels;
- Grade control structures;
- Bridges and drainage crossings;
- Utility crossings;
- Trails;
- Building pads;
- Activities associated with construction of a Water Reclamation Plant (WRP) adjacent to the Santa Clara River and required bank protection;
- Water quality control facilities (sedimentation control, flood debris, and water quality basins);
- Ongoing maintenance activities by the LACDPW; and
- Temporary haul routes for grading equipment.

In addition to construction of the permitted facilities identified above, the proposed action includes development of a CCAA between Newhall Land and the USFWS. The CCAA would serve to protect populations of San Fernando Valley spineflower, a species identified as a candidate for listing under the federal Endangered Species Act, which occur on the Newhall Ranch, Valencia Commerce Center, and Entrada sites. The CCAA would involve spineflower preserves and management and also authorize the take of certain spineflower plants at all three locations.

3. *Scope of Analysis.* The DEIS will be a project-level document which addresses a number of interrelated

actions over a specific geographic area that (1) would occur as logical parts in the chain of contemplated actions, and (2) would be implemented under the same authorizing statutory or regulatory authorities. The information in the EIS will be sufficient for the Corps to make a decision regarding the issuance of a long-term Section 404 permit for the Newhall Ranch Specific Plan. The EIS will also allow the USFWS to make a decision on the CCAA.

The document will be a joint Federal and state document. The California Department of Fish and Game (CDFG) will prepare an Environmental Impact Report (EIR) in accordance with the California Environmental Quality Act for the same project regarding a state streambed alteration agreement, state endangered species permit for Newhall Ranch, and a Spineflower Conservation Plan and state endangered species permit for the Newhall Ranch, Valencia Commerce Center and Entrada areas. The Corps and CDFG will work cooperatively to prepare a joint DEIS/DEIR document, and to coordinate the public noticing and hearing processes under Federal and state laws.

The impact analysis will follow the directives in 33 CFR Part 325 Appendix B, which requires that it be limited to the impacts of the specific activities requiring a 404 permit and only those portions of the project outside of "waters of the United States" over which the Corps has sufficient control and responsibility to warrant Federal review. However, due to the varied location and extent of waters of the United States, threatened and endangered species and critical habitat, and historic and prehistoric cultural sites within the project area, there exists sufficient cumulative Federal responsibility and control to expand the geographic scope of analysis to include the entire Newhall Ranch Specific Plan site. This extension of the scope of environmental analysis will address indirect and cumulative impacts of the regulated activities, as well as connected actions pursuant to NEPA guidelines (40 CFR part 1508(a)(1)). In upland areas, the Corps will evaluate impacts to the environment and identify feasible and reasonable mitigation measures and the appropriate state or local agencies with authority to implement these measures if they are outside the authority of the Corps. In evaluating impacts to areas and resources outside the Corps' jurisdiction, the Corps will consider the information and conclusions from the Final Program EIR for the Specific Plan prepared by Los Angeles County Department of Regional Planning.

However, the Corps will exercise its independent expertise and judgment in addressing indirect and cumulative impacts to upland areas due to issuance of the proposed Section 404 permit.

4. *Significant Issues.* There are several potential environmental issues that will be addressed in the DEIS/DEIR. Additional issues may be identified during the scoping process. Issues initially identified as potentially significant include:

- (a) Surface Water Hydrology, Erosion and Sedimentation;
- (b) Groundwater;
- (c) Water Quality;
- (d) Biological Resources;
- (e) Jurisdictional Streams and Wetlands;
- (f) Air Quality;
- (g) Traffic;
- (h) Noise;
- (i) Cultural Resources;
- (j) Paleontological Resources;
- (k) Agriculture and Soils;
- (l) Geology and Geologic Hazards;
- (m) Land Use;
- (n) Visual Resources;
- (o) Parks, Recreation, and Trails;
- (p) Public Safety;
- (q) Public Services;
- (r) Hazards and Hazardous Materials;
- (s) Socioeconomics/Environmental Justice;

(t) Significant, Irreversible Environmental Changes.

5. *Alternatives.* Alternatives initially being considered for the proposed improvement project include the following:

(a) Numerous alternate locations and configurations of various proposed facilities such as buried bank stabilization, bridges, and grade control structures, along each of the major side drainages including Chiquito Canyon, Potrero Canyon, San Martinez Grande, and Long Canyon, as well as the Santa Clara River, ranging from no impact to the proposed action and configurations of various proposed San Fernando Valley Spineflower Preserve areas;

(b) Under the No Federal Action alternative, the proposed Section 404 permit would not be issued, so no discharges of fill material within Corps jurisdictional waters would be authorized. This alternative will be analyzed in the DEIS/DEIR to satisfy NEPA requirements to evaluate the impacts of "No Federal Action" alternative.

6. *Scoping Process.* A previous NOI was published in the **Federal Register** on January 29, 2004 (69 FR 4295–4296). Public scoping meetings to receive input on the scope of the DEIS/EIR were previously conducted on February 4, 2000 in Santa Clarita and February 19,

2004 in Castaic, California. An additional public scoping meeting will be held on August 24, 2005, at 6:30 pm, at the Castaic Middle School Multipurpose Room located at 28900 West Hillcrest Parkway, Castaic, CA.

Participation in the scoping is encouraged by Federal, state, and local agencies, and other interested private citizens and organizations. The Corps will be the federal lead agency and the USFWS will be a cooperating agency for this DEIS/EIR. Other environmental review and consultation requirements, not discussed above, include a USFWS Section 7 Biological Opinion, State Historic Preservation Office consultation, and a 401 certification and National Pollutant Discharge Elimination System (NPDES) permit from the Los Angeles Regional Water Quality Control Board.

7. *Availability of the Draft EIS/EIR.* The joint lead agencies expect the Draft EIS/EIR to be made available to the public in late 2005. Written comments on the DEIS/DEIR will be received once that document is released. A public hearing will be held during the public comment period for the Draft EIS/EIR.

Dated: July 11, 2005.

Brian M. Moore,

Deputy District Engineer for Project Management.

[FR Doc. 05-14181 Filed 7-18-05; 8:45 am]

BILLING CODE 3710-92-P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 18, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 12, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: FRSS on Public School

Principal's Perceptions of Their School Facilities: Fall 2005.

Frequency: On occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 300.

Abstract: The Quick Response Information System consists of two survey system components—Fast Response Survey System (FRSS) for schools, districts, libraries and the Postsecondary Education Quick Information System (PEQIS) for postsecondary institutions. This survey will go to 1200 public elementary and secondary school principals. It will provide current information about principals' satisfaction with various environmental factors in their schools, the extent to which they perceive those factors as interfering with the ability of the school to deliver instruction, the use of portable buildings and whether the school is overcrowded.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2816. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress 2006 Wave 3 U.S. History, Civics, Economics and Math Background, and School Questionnaires.

Frequency: On occasion.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour

Burden: Responses—66,450. Burden Hours—16,831.

Abstract: This submittal applies to the questionnaires for students on U.S. History, Civics, and Economics; for Teachers on U.S. History, Civics, Economics and Mathematics; and School Questionnaires including U.S. History, Civics, Economics, and Charter School Questions.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2813. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Office of Planning, Evaluation and Policy Development

Type of Review: Reinstatement.

Title: Study of the Implementation of Research-Based Programs and Practices to Prevent Youth Substance Abuse and School Crime.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour

Burden: Responses—14,751. Burden Hours—6,992.

Abstract: This study will examine the proportion of Safe and Drug-Free Schools and Communities grantees that are implementing research-based programs and practices that are found to be effective and the proportion of these programs that are implementing the research with a high degree of fidelity. Specifically the study will investigate the following two research questions:

(1) What proportion of drug and/or violence prevention programs nationally, and in the SDFSC program, are implementing research-based drug and/or violence prevention programs and practices that scientific evidence has shown produce positive outcomes?

(2) To what extent nationally, and in the SDFSC program, are drug and/or violence prevention programs that are implementing research-based programs and practices doing so with fidelity to the research on which they are based?

To address these questions, this study is conducting a systematic review of research to identify effective programs and practices and will survey a nationally-representative sample of districts, schools, and Governors programs to assess the implementation quality of prevention programs and practices.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2821. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the

Internet address OCIO_RIMG@ed.gov or faxed to 202-245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-14115 Filed 7-18-05; 8:45 am]

BILLING CODE 4000-01-U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 18, 2005.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the

following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 13, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: New.

Title: Experimental Sites Initiative—Data Collection Instrument.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour

Burden: Responses: 150.

Burden Hours: 1,650.

Abstract: This data collection instrument will be used to collect specific information/performance data for analysis of nine experiments. This effort will assist ED/SFA in obtaining and compiling information to help determine change in the administration and delivery of Title IV programs. The experiments cover major financial aid processes.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2758. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to (202) 245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress, Sensitivity to the Effects of Reform-Based Teaching and Learning in Middle School Mathematics.

Frequency: Semi-Annually.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,920.

Burden Hours: 720.

Abstract: Students in grade 7 and 8 reform-oriented mathematics will be tested at the beginning and end of the school year with NAEP and a reform-oriented test. The study will evaluate NAEP's ability to detect the effects of a reform curriculum.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2806. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to (202) 245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Institute of Education Sciences

Type of Review: Revision.

Title: National Assessment of Educational Progress 2006 Background Questions for Students with Disabilities or English Language Learners.

Frequency: One time.

Affected Public: Individuals or household; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 3,319.

Burden Hours: 1,105.

Abstract: This submittal applies to the Students with Disabilities and English Language Learners questionnaires to be completed by school personnel for those students. NAEP encourages the inclusion of all students who can meaningfully participate in the

assessment, including those with disabilities and those with limited English proficiency.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2807. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to (202) 245-6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-14144 Filed 7-18-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 19, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information

Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 13, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Reinstatement.

Title: National Assessment of Adult Literacy.

Frequency: One time.

Affected Public: Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 250.

Burden Hours: 1,000.

Abstract: As part of completion of the National Assessment of Adult Literacy 1992 work, this study is a field test of a real-world tasks study. The information gathered through this data collection effort will be used to ensure that the assessment reflects a suitable and appropriate range of authentic materials and tasks.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2822. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW.,

Potomac Center, 9th Floor, Washington, DC 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to (202) 245-6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-14145 Filed 7-18-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Overview Information; Assistive Technology Act of 1998, as Amended—National Activities—National Assistive Technology Training and Technical Assistance Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2005

Catalog of Federal Domestic Assistance (CFDA) Number: 84.224B-1.

DATES: Applications Available: July 19, 2005.

Deadline for Transmittal of Applications: August 18, 2005. **Deadline for Intergovernmental Review:** August 29, 2005.

Eligible Applicants: Public or private nonprofit or for-profit organizations, including institutions of higher education, that have (directly or through grant or contract) (1) experience and expertise in administering programs, including developing, implementing, and administering the required and discretionary activities described in sections 4 and 5 of the Assistive Technology Act of 1998, as amended (AT Act); (2) experience and expertise in providing technical assistance; and (3) documented experience in and knowledge about banking, finance, and microlending. This means that an eligible entity can demonstrate its experience and expertise on its own or through proposed subgrants or subcontracts with other entities that demonstrate the relevant experience and expertise.

Estimated Available Funds: \$640,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The AT Act authorizes support for activities that increase the availability of, funding for, access to, provision of, and training about assistive technology (AT) devices and AT services. The AT Act authorizes the Secretary to provide grants to States to support comprehensive statewide AT programs (Statewide AT Programs) that improve access to and the acquisition of AT devices and services for individuals with disabilities and their families. The AT Act also authorizes the Secretary to provide grants to protection and advocacy systems in order to enable these systems to assist in the acquisition, use, or maintenance of AT devices and services (PAAT). Under section 6 of the AT Act, the Secretary is authorized to provide grants to support national activities to improve the administration of the AT Act, such as the provision of training and technical assistance to entities funded under the AT Act to improve the effectiveness of their programs and to entities not funded under the AT Act to improve awareness of and access to AT. Other national activities include data collection and assistance and a National Public Internet Site. In addition, a provision in section 4 of the AT Act authorizes grants to States for Alternative Financing Programs (AFPs) in accordance with title III of the AT Act, as in effect before the enactment of the amendments in 2004, to pay for the Federal share of the cost of establishing, or expanding, and administering one or more alternative financing mechanisms to allow individuals with disabilities and their families to purchase AT devices and services. Title III, section 306, of the AT Act, as in effect prior to the enactment of the amendments of 2004, requires that information and technical assistance be provided to AFPs. Under section 308(b) of the AT Act, as in effect prior to the enactment of the amendments of 2004, the Secretary reserves funds from any appropriation for title III for this purpose. In years when those funds are appropriated, additional funds for technical assistance to AFPs will be available.

Priority: We are establishing this priority for the FY 2005 grant competition only, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA).

Absolute Priority: For FY 2005 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

National Assistive Technology Training and Technical Assistance Program (National AT TA Program)

This priority is for a project to provide technical assistance and training to entities funded under the AT Act and entities not funded under the AT Act to improve the effectiveness of activities supported under the AT Act.

If the applicant chooses to award subgrants or subcontracts to carry out activities required under this priority, the applicant's proposal must reflect clearly how the applicant will collaborate with any entities to which the applicant will provide a subgrant or subcontract in order to ensure that activities conducted by those entities meet the requirements of this priority and are consistent with the applicant's proposal. The project must—

(1) Address State-specific information requests concerning AT from entities funded under the AT Act and public entities not funded under the AT Act, including—

(a) Requests for information on effective approaches to Federal-State coordination of programs for individuals with disabilities, related to improving funding for or access to AT devices and AT services for individuals with disabilities of all ages;

(b) Requests for state-of-the-art, or model, Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services;

(c) Requests for information on effective approaches to developing, implementing, evaluating, and sustaining activities described in sections 4 and 5 of the AT Act and related to improving funding for or access to AT devices and AT services for individuals with disabilities of all ages, and requests for assistance in developing corrective action plans;

(d) Requests for examples of policies, practices, procedures, regulations, or judicial decisions that have enhanced or may enhance access to funding for AT devices and AT services for individuals with disabilities;

(e) Requests for information on effective approaches to the development of consumer-controlled systems that increase access to, funding for, and awareness of, AT devices and AT services; and

(f) Other requests for training and technical assistance from entities funded under the AT Act and public and private entities not funded under the AT Act;

(2) Assist targeted individuals and entities by disseminating information about—

(a) Federal, State, and local laws, regulations, policies, practices, procedures, and organizational structures, that facilitate, and overcome barriers to, funding for, and access to, AT devices and AT services, to promote fuller independence, productivity, and inclusion in society for individuals with disabilities of all ages; and

(b) Technical assistance activities undertaken under paragraph (1) of this priority;

(3) Provide State-specific, regional, and national training and technical assistance concerning AT to entities funded under the AT Act and to public and private entities not funded under the AT Act, including—

(a) Annually providing a forum for exchanging information concerning, and promoting program and policy improvements in, required activities of the Statewide AT Programs, AFPs, and PAAT programs;

(b) Facilitating onsite and electronic information sharing using state-of-the-art Internet technologies such as real-time online discussions, multipoint video conferencing, and Web-based audio/video broadcasts, on emerging topics that affect Statewide AT Programs, AFPs, and PAAT programs;

(c) Convening experts from Statewide AT Programs, AFPs, PAAT programs, representatives of organizations representing individuals with disabilities and their families, representatives of Federal agencies, researchers in AT, and AT developers and vendors to discuss and make recommendations with regard to national emerging issues of importance to individuals with AT needs;

(d) Sharing information on evidence-based and promising practices among Statewide AT Programs, AFPs, and PAAT programs;

(e) Maintaining an accessible Web site that includes links to Statewide AT Programs, AFPs, PAAT programs, appropriate Federal departments and agencies, the National Public Internet Site funded under section 6 of the AT Act, and private associations;

(f) Developing a national toll-free number that links callers from any State with the Statewide AT Program, AFP, and PAAT program in their State;

(g) Assisting Statewide AT Programs to reduce the costs of AT through the development or use of existing model cooperative volume-purchasing mechanisms;

(h) Assisting Statewide AT Programs, AFPs, and PAAT programs to reduce the duplication of their activities;

(i) Providing access to experts in the areas of banking, microlending, and finance for entities funded under the AT Act and other entities not funded under the AT Act;

(j) Assisting Statewide AT Programs in achieving the measurable goals required by section 4(d)(3) of the AT Act;

(k) Facilitating collaboration at the National and State level among Statewide AT Programs, AFPs, PAATs, and other entities involved in AT; and

(l) Facilitating consumer involvement in Statewide AT Programs, AFPs, and PAATs at the national and State level;

(4) Collaborate with other projects funded under section 6 of the AT Act;

(5) Conduct outreach to and collaborate with relevant Federal, State, and local programs and projects that increase access to AT, including programs that increase access to AT in education, employment, community living, and telecommunications and information technology;

(6) Provide to the Secretary the data and information necessary to improve the administration of the AT Act and to evaluate the project's progress in accordance with the performance measures in section VI. 4. *Performance Measures* of this notice;

(7) Include plans for designing and providing training and technical assistance with the input of—

(a) Directors of Statewide AT Programs;

(b) Directors of AFPs;

(c) Directors of PAAT programs;

(d) Individuals with disabilities who use AT and understand the barriers to the acquisition of that technology and AT services;

(e) Family members, guardians, advocates, and authorized representatives of individuals with disabilities who use AT;

(f) Relevant employees from Federal departments and agencies, other than the Department of Education;

(g) Representatives of businesses; and

(h) Vendors and public and private researchers and developers; and

(8) Include plans for evaluating the effectiveness of the technical assistance and training program in accordance with the performance measures in section VI. 4. *Performance Measures* of this notice.

Waiver of Proposed Rulemaking:

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Ordinarily, this practice would have applied to the absolute priority for the National AT TA Program. Section 437(d)(1) of GEPA (20 U.S.C.

1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program under section 6 of the AT Act and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the proposed absolute priority under section 437(d)(1). This absolute priority will apply to the FY 2005 grant competition only.

Program Authority: 29 U.S.C. 3001 *et seq.*

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: \$640,000.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Public or private nonprofit or for-profit organizations, including institutions of higher education, that have (directly or through grant or contract) (1) experience and expertise in administering programs, including developing, implementing, and administering the required and discretionary activities described in sections 4 and 5 of the AT Act; (2) experience and expertise in providing technical assistance; and (3) documented experience in and knowledge about banking, finance, and microlending. This means that an eligible entity can demonstrate its experience and expertise on its own or through proposed subgrants or subcontracts with other entities that demonstrate the relevant experience and expertise.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application*

Package: Education Publications Center

(ED Pubs), P.O. Box 1398, Jessup, MD 20794-1398. Telephone (toll free): 1-877-433-7827. FAX: (301) 470-1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1-877-576-7734.

You may also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html> or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.224B-1.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, Potomac Center Plaza, Washington, DC 20202-2550. Telephone: (202) 245-7363. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

2. Content and Form of Application Submission: Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. Submission Dates and Times:

Applications Available: July 19, 2005.

Deadline for Transmittal of Applications: August 18, 2005.

Applications for grants under this competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants system, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: August 29, 2005.

4. Intergovernmental Review: This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. Funding Restrictions: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. Other Submission Requirements: Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

If you choose to submit your application to us electronically, you must use e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: <http://e-grants.ed.gov>.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6 a.m. Monday

until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

- Any narrative sections of your application must be attached as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format.

- Your electronic application must comply with any page limit requirements described in this notice.

- Prior to submitting your electronic application, you may wish to print a copy of it for your records.

- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

- Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245-6272.

- We may request that you provide us original signatures on other forms at a later date. *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1-888-336-8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of the Department's e-Application system. If the e-Application system is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail.

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.224B-1), 400 Maryland Avenue, SW.,
Washington, DC 20202-4260.

or

By mail through a commercial carrier:

U.S. Department of Education,
Application Control Center—Stop
4260, Attention: (CFDA Number
84.224B-1), 7100 Old Landover Road,
Landover, MD 20785-1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery.

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.224B-1), 550 12th Street, SW., Room 7041,
Potomac Center Plaza, Washington,
DC 20202-4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245-6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are provided in the application package.

VI. Award Administration Information

1. Award Notices: If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. Administrative and National Policy Requirements: We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. Reporting: At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. Performance Measures: The Government Performance and Results Act of 1993 (GPRA) directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. The goal of the National AT TA Program is to provide support to entities funded under the AT Act that improves the effectiveness of their programs and support to entities not funded under the AT Act to improve awareness of and access to assistive technology. In order to assess the success of the grantee in meeting these goals, in addition to other information the grantee's annual performance report must include (1) a description of State-specific and national technical assistance and training provided to support the improvement of Statewide AT Programs, PAAT programs, and AFPs, and the result of that technical assistance or training as evidenced by changes in the operation of Statewide AT Programs, PAAT programs, or AFPs or other relevant and identifiable changes; (2) a description of collaboration between the grantee and other entities involved in AT, and the result of that collaboration as evidenced by changes in the operation of the

grantee or other entities, or other relevant and identifiable changes; (3) a description of the collaboration between the grantee and any entities to which the grantee provides a subcontract or subgrant, and the result of that collaboration as evidenced by improved delivery of technical assistance and training and improved collaboration between entities funded under the AT Act at the national and State level or other relevant and identifiable improvements; and (4) a description of how the technical assistance and training needs of entities funded under the AT Act and entities not funded under the AT Act are identified and met, and the result of meeting those needs as evidenced by resolution of State-specific and national issues or other relevant and identifiable outcomes.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT:

Jeremy Buzzell, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5025, Potomac Center Plaza, Washington, DC 20202-2800. Telephone: (202) 245-7319 or by e-mail: jeremy.buzzell@ed.gov.

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

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1-888-293-6498; or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

Dated: July 14, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05-14191 Filed 7-18-05; 8:45 am]

BILLING CODE 4000-01-P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of Public Meeting Agenda.

DATE & TIME: Thursday, July 28, 2005, 10 a.m. – 12 Noon.

PLACE: California Institute of Technology, Baxter Humanities Building, Baxter Lecture Hall (Third Floor), 1200 East California Blvd., Pasadena, CA 91125.

AGENDA: The Commission will receive the following reports: Title II Requirements Payments Update, Statewide voter registration list guidance, and updates on other administrative matters. The Commission will receive presentations regarding the voter identification provisions of the Help America Vote Act of 2002 (HAVA).

This Meeting Will Be Open To the Public.

CONTACT FOR FURTHER INFORMATION:

Bryan Whitener, Telephone: (202) 566-3100.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 05-14214 Filed 7-15-05; 10:46 am]

BILLING CODE 6820-KF-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96-1-026]

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice of Compliance Filing

July 12, 2005.

In the matter of: Docket Nos. RP05-417-000, RP05-479-000, RP05-465-000, RP05-464-000, RP05-471-000, RP05-482-000, RP05-411-000, RP05-419-000, RP05-457-000, RP05-436-000, RP05-404-000, RP05-424-000, RP05-446-000, RP05-488-000, RP05-459-000, RP05-433-000, RP05-434-000, RP05-435-000, RP05-495-000, RP05-426-000, RP05-437-000, RP05-472-000, RP05-423-000, RP05-416-000, RP05-407-000, RP05-460-000, RP05-445-000, RP05-442-000, RP05-443-000, RP05-444-000, RP05-453-000, RP05-458-000, RP05-447-

000, RP05-475-000, RP05-391-000, RP05-400-000, RP05-414-000, RP05-439-000, RP05-429-000, RP05-413-000, RP05-468-000, RP05-456-000, RP05-438-000, RP05-473-000, RP05-418-000, RP05-461-000, RP05-393-000, RP05-489-000, RP05-454-000, RP05-448-000, RP05-477-000, RP05-420-000, RP05-498-000, RP05-463-000, RP05-496-000, RP05-392-000, RP05-409-000, RP05-406-000, RP05-497-000, RP05-405-000, RP05-485-000, RP05-469-000, RP05-462-000, RP05-441-000, RP05-483-000, RP05-466-000, RP05-487-000, RP05-455-000, RP05-486-000, RP05-402-000, RP05-470-000, RP05-395-000, RP05-390-000, RP05-427-000, RP05-474-000, RP05-499-000, RP05-452-000, RP05-410-000, RP05-396-000, RP05-428-000, RP05-421-000, RP05-481-000, RP05-480-000, RP05-449-000, RP05-493-000, RP05-492-000, RP05-415-000, RP05-412-000, RP05-484-000, RP05-430-000, RP05-394-000, RP05-478-000, RP05-432-000, RP05-450-000, RP05-451-000; Algonquin Gas Transmission, L.L.C., Alliance Pipeline L.P., ANR Pipeline Company, ANR Storage Company, Black Marlin Pipeline Company, Blue Lake Gas Storage Company, B-R Pipeline Company, Canyon Creek Compression Company, CenterPoint Energy Gas Transmission Company, CenterPoint Energy-Mississippi River Transmission Corporation, Central New York Oil and Gas Company, LLC, Chandeaur Pipe Line Company, Cheyenne Plains Gas Pipeline Company, L.L.C., Clear Creek Storage Company, L.L.C., Colorado Interstate Gas Company, Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company, Dauphin Island Gathering Partners, Destin Pipeline Company, L.L.C., Discovery Gas Transmission LLC, Dominion Cove Point LNG, LP, Dominion Transmission, Inc., East Tennessee Natural Gas, L.L.C., Egan Hub Storage, LLC, El Paso Natural Gas Company, Enbridge Offshore Pipeline, Enbridge Pipelines (AlaTenn), Enbridge Pipelines (KPC), Enbridge Pipelines (Midla) L.L.C., Garden Banks Gas Pipeline, LLC, Gas Transmission Northwest Corporation, Granite State Gas Transmission, Inc., Great Lakes Gas Transmission Limited Partnership, Guardian Pipeline, LLC, Gulf South Pipeline Company, Gulfstream Natural Gas System L.L.C., High Island Offshore System, L.L.C., Honeoye Storage Corporation, Horizon Pipeline Company, Iroquois Gas Transmission System, L.P., Kern River Gas Transmission Company, Kinder Morgan Interstate Gas Transmission LLC, KO Transmission Company, Maritimes & Northeast Pipeline, L.L.C., MarkWest New Mexico L.P., Midwestern Gas Transmission Company, MIGC, Inc., Mississippi Canyon Gas Pipeline, LLC, Mojave Pipeline Company, National Fuel Gas Supply Corporation, Natural Gas Pipeline Company of America, Nautilus Pipeline Company, L.L.C., NGO Transmission, Inc., North Baja Pipeline, LLC, Northern Border Pipeline Company, Northern Natural Gas Company, Northwest Pipeline Corporation, Overthrust Pipeline Company, Ozark Gas Transmission, L.L.C., Paiute Pipeline Company, Panhandle Eastern Pipe Line Company, LP, Panther Interstate Pipeline Energy, L.L.C., Petal Gas Storage,

L.L.C., Pine Needle LNG Company, LLC, Questar Pipeline Company, Questar Southern Trails Pipeline Company, Sabine Pipe Line LLC, Saltville Gas Storage Company, L.L.C., SCG Pipeline, Inc., Sea Robin Pipeline Company, LLC, Southern LNG Inc., Southern Natural Gas Company, Southern Star Central Gas Pipeline, Inc., Southwest Gas Storage Company, Stingray Pipeline Company, L.L.C., Tennessee Gas Pipeline Company, Texas Eastern Transmission, LP, Texas Gas Transmission Corporation, Total Peaking Services, L.L.C., Trailblazer Pipeline Company, TransColorado Gas Transmission Company, Transcontinental Gas Pipe Line Corporation, Transwestern Pipeline Company, LLC, Trunkline Gas Company, LLC, Trunkline LNG Company, LLC, Tuscarora Gas Transmission Co., USG Pipeline Company, Vector Pipeline L.P., Venice Gathering System L.L.C., Viking Gas Transmission Company, WestGas Interstate, Inc., Williston Basin Interstate Pipeline Company, Wyoming Interstate Company, Ltd, Young Gas Storage Company, Ltd.

Take notice that the above-referenced pipelines filed revised tariff sheets to comply with the Commission's Order No. 587-S, Final Rule, in Docket No. RM96-1-026 issued May 9, 2005, 111 FERC ¶ 61,203 (2005). The revised tariff sheets are to be effective September 1, 2005.

In Order No. 587-S, the Commission, among other things, amended 18 CFR 284.12 of its regulations incorporate by reference the most recent version, Version 1.7 of the standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB). The Commission also incorporated by reference the standards ratified by NAESB on June 25, 2004, to implement Order No. 2004, the standards ratified by NAESB on May 3, 2005, to implement Order No. 2004-A, and the standards to implement gas quality reporting requirements ratified by NAESB on October 20, 2004. In Order No. 587-S, the Commission required pipelines to file revised tariff sheets to reflect the changed standards by July 1, 2005, with an effective date of September 1, 2005.

Due to the large number of pipelines that have filed to comply with Order No. 587-S, the Commission is issuing this single notice of the filings included in the caption.

Any person desiring to become a party in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Intervention and Protest Date: 5 p.m. Eastern Time on July 18, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3820 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96-200-143]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

July 13, 2005.

Take notice that on July 7, 2005, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing and approval certain negotiated rate agreements between CEGT and CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Oklahoma Gas. CEGT states that it has entered into an amended agreement and one new

agreement to provide service to this shipper to be effective August 1, 2005.

CEGT also has submitted the following tariff sheets to be included as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective August 1, 2005:

First Revised Sheet No. 857

First Revised Sheet No. 858

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3815 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. CP05-389-000]

Columbia Gas Transmission Corporation; Notice of Application

July 13, 2005.

Take notice that Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP05-389-000 on July 1, 2005, an application pursuant to section 7(b) of the Natural Gas Act (NGA), to abandon certain unneeded natural gas storage facilities, consisting of 6 storage wells along with associated pipeline and appurtenant facilities, located in Richland and Medina Counties, Ohio, and Kanawha County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502-8222 or TTY, (202) 208-1659.

Any questions regarding this application should be directed to Fredric J. George, Lead Counsel, at (304) 357-2359 (telephone) or (304) 357-3206 (fax).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as

possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: 5 p.m. Eastern Time on August 3, 2005.

Magalie R. Salas,

Secretary,

[FR Doc. E5-3826 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[Docket No. RP05-506-000]

Dominion Cove Point Lng, LP; Notice of Proposed Changes in FERC Gas Tariff

July 13, 2005.

Take notice that on July 8, 2005, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, to become effective August 8, 2005:

Third Revised Sheet No. 247

Original Sheet No. 247A.

Cove Point states that the purpose of this filing is to revise section 10, release and assignment of service rights, of the general terms and conditions (GT&C) of Cove Point's tariff to provide Cove Point with the right to terminate a replacement customer's capacity release transaction in the event the releasing customer's contract is terminated.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary,

[FR Doc. E5-3824 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Docket No. RP05-502-000]****Dominion Transmission, Inc.; Notice of Report of Overrun Charge/Penalty Revenue Distribution**

July 13, 2005.

Take notice that on July 7, 2005, Dominion Transmission, Inc. (DTI) filed its annual report of overrun charge/penalty revenue distributions. DTI states that section 41 of the general terms and conditions of DTI's FERC Gas Tariff, crediting of unauthorized overrun charge and penalty revenues, requires distribution of such charges and revenues to non-offending customers on June 30 of each year, and filing of the related report within 30 days of the distribution.

DTI states that it distributed the penalty revenues to customers on June 30, 2005. DTI further states that included in the distribution was overrun penalty revenue DTI received from offending customers for the twelve-month period ending March 2005, with interest calculated through June 30, 2005.

DTI states that copies of the filing are being mailed to DTI's customers and to all interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3822 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RP05-507-000]****Dominion Transmission, Inc., Notice of Proposed Changes in FERC Gas Tariff**

July 13, 2005.

Take notice that on July 8, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective August 8, 2005:

Second Revised Sheet No. 1153
Third Revised Sheet No. 1154.

DTI states that the purpose of this filing is to revise Section 23, Capacity Release, of the general terms and conditions (GT&C) of DTI's tariff to provide DTI with the right to terminate a replacement customer's capacity release transaction in the event the releasing customer's contract is terminated.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone

filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant. The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3825 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket Nos. RM96-1-026, RP05-501-000, RP05-504-000 and RP05-503-000]****Standards for Business Practices of Interstate Natural Gas Pipelines, Florida Gas Transmission Company, Steuben Gas Storage Company, Equitrans, L.P.; Notice of Compliance Filing**

July 13, 2005.

Take notice that the above-referenced pipelines filed revised tariff sheets in accordance with the Commission's Order No. 587-S, Final Rule, in Docket No. RM96-1-026 issued May 9, 2005, 111 FERC ¶ 61,203 (2005). The revised tariff sheets are to be effective September 1, 2005.

The above-referenced pipelines explains that in Order No. 587-S, the Commission, among other things, amended 18 CFR 284.12 of its regulations incorporate by reference the most recent version, Version 1.7 of the standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB). The pipelines further note that the Commission also

incorporated by reference the standards ratified by NAESB on June 25, 2004, to implement Order No. 2004, the standards ratified by NAESB on May 3, 2005, to implement Order No. 2004-A, and the standards to implement gas quality reporting requirements ratified by NAESB on October 20, 2004. The pipelines further state that in Order No. 587-S, the Commission required pipelines to file revised tariff sheets to reflect the changed standards by July 1, 2005, with an effective date of September 1, 2005.

Any person desiring to become a party in any of the listed dockets must file a separate motion to intervene in each docket for which they wish party status.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on July 21, 2005.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3821 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-505-000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 13, 2005.

Take notice that on July 7, 2005, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective August 6, 2005:

Fifth Revised Sheet No. 7
Fifth Revised Sheet No. 247
First Revised Sheet No. 55
Second Revised Sheet No. 79
First Revised Sheet No. 247A
Seventh Revised Sheet No. 203
Second Revised Sheet No. 267
First Revised Sheet No. 221
Fourth Revised Sheet No. 222
Third Revised Sheet No. 408
Fourth Revised Sheet No. 223
Fourth Revised Sheet No. 224
Third Revised Sheet No. 418
Fourth Revised Sheet No. 225
First Revised Sheet No. 246C
Second Revised Sheet No. 426
Second Revised Sheet No. 493
Second Revised Sheet No. 494
Fourth Revised Sheet No. 495

Midwestern states that it is proposing to make minor housekeeping changes to its Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3823 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER94-1384-031, ER99-2329-004, ER00-1803-003, ER01-457-003, ER02-1485-005, ER03-1108-005, ER03-1109-004, ER03-1315-003 and ER04-733-002 (not consolidated)]

Morgan Stanley Capital Group Inc., South Eastern Electric Development Corporation, South Eastern Generating Corporation, Naniwa Energy LLC, Power Contract Finance, L.L.C., Power Contract Financing II, L.L.C., Power Contract Financing II, Inc., MS Retail Development Corp. and Utility Contract Funding II, LLC; Notice of Amendment to Compliance Filing

June 7, 2005.

Take notice that, on June 6, 2005, Morgan Stanley Capital Group Inc. (MSCG), on behalf of itself and its affiliates South Eastern Electric Development Corporation, South Eastern Generating Corporation, Naniwa Energy LLC, Power Contract Finance, L.L.C., Power Contract Financing II, L.L.C., Power Contract Financing II, Inc., MS Retail Development Corp., and Utility Contract Funding II, LLC, submitted an amendment to its March 24, 2005 compliance filing in the above-captioned proceedings.

MSCG states that copies of the filing were served on parties on the official service lists in the above-captioned proceedings.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First 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 email FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. on June 13, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-3835 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05-391-000]

Williston Basin Interstate Pipeline Company; Notice of Filing

July 13, 2005.

Take notice that on July 5, 2005, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed an abbreviated application, pursuant to section 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's Rules and Regulations, for an Order Permitting and Approving Abandonment of certain natural gas storage facilities in Fallon County, Montana. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Williston Basin requests authorization for the abandonment of three existing natural gas storage injection/withdrawal wells in the Baker Storage Field, Fallon County, Montana. The proposed wells to be abandoned are Well Nos. 136, 195, and 287. Williston Basin states that these wells are old and have been shut-in. Williston Basin believes the abandonment will have no effect on the certificated maximum deliverability of 114,815 Mcf per day of the Baker Storage Field. In conjunction with the proposed abandonment, Williston Basin will also abandon the field meter station associated with Well No. 195 and a total of approximately 0.8 miles of field storage line associated with the three wells. The abandonment of the meter station and storage field lines will be performed pursuant to Williston Basin's blanket certificate authorized under Docket Nos. CP82-487-000, *et al.*

Any questions regarding the application are to be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismarck, North Dakota 58506-5601; phone number (701) 530-1560.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on

or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5 p.m. Eastern Time on August 3, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5-3816 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

Tuesday, June 7, 2005.

Take notice that the Commission received the following electric rate filings

Docket Numbers: ER01-3001-012.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc.'s Bi-Annual Compliance report under ER01-3001 regarding status of demand response programs and the addition of new generation resources.

Filed Date: 06/02/2005.

Accession Number: 20050602-5005.

Comment Date: 5 p.m. Eastern Time on Thursday, June 23, 2005.

Docket Numbers: ER05-1064-000.

Applicants: Celerity Energy of New Mexico, LLC.

Description: Celerity Energy of New Mexico LLC submits a Notice of Cancellation of its market based rate tariff currently on file designated as

FERC Electric Tariff, Original Volume No. 1 under ER05-1064.

Filed Date: 06/02/2005.

Accession Number: 20050606-0050.

Comment Date: 5 p.m. Eastern Time on Thursday, June 13, 2005.

Docket Numbers: ER05-1066-000.

Applicants: Nevada Power Company.

Description: Nevada Power Company submits an executed Service Agreement for Network Integration Transmission Service Retail Access Transmission Service designated as Service Agreement 05-00393 and a Network Operating Agreement designated as Service Agreement No. 05-00392 under Sierra Pacific Resources Operating Companies' FERC Electric Tariff, Third Revised Volume No. 1, effective 6/1/05.

Filed Date: 06/02/2005.

Accession Number: 20050606-0162.

Comment Date: 5 p.m. Eastern Time on Thursday, June 23, 2005.

Docket Numbers: ER05-1067-000.

Applicants: Deseret Generation & Transmission Co-operative, Inc.

Description: Deseret Generation & Transmission Co-operative, Inc. submits its annual information filing setting forth updated approved costs for member-owned generation resources for 2005 under ER05-1067.

Filed Date: 06/02/2005.

Accession Number: 20050606-0163.

Comment Date: 5 p.m. Eastern Time on Thursday, June 23, 2005.

Docket Numbers: ER05-1068-000.

Applicants: Nevada Power Company.

Description: Nevada Power Company submits a notice of cancellation of a Service Agreement for Network Integration Transmission Service Retail Access Transmission Service designated Agreement 04-00201 and the related Network Operating Agreement designated Agreement No. 04-00202 which were filed with the Commission by Nevada Power on June 4, 2004 in Docket No. ER04-909-000.

Filed Date: 06/02/2005.

Accession Number: 20050606-0157.

Comment Date: 5 p.m. Eastern Time on Thursday, June 23, 2005.

Docket Numbers: ER05-1069-000.

Applicants: Nevada Power Company.

Description: Nevada Power submits a Notice of Cancellation of a Service Agreement for Network Integration Transmission Service Retail Access Transmission Service designated as Service Agreement No. 04-00722 and a Network Operating Agreement designated as Agreement No. 04-0073 which were filed by Nevada Power on December 15, 2004 in Docket No. ER05-334-000.

Filed Date: 06/02/2005.

Accession Number: 20050606-0158.

Comment Date: 5 p.m. Eastern Time on Thursday, June 23, 2005.

Docket Numbers: ER05-722-001.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Power Company d/b/a Progress Energy Carolinas, Inc. submits its refund report in compliance with FERC's 5/20/05 letter order under ER05-722.

Filed Date: 06/02/2005.

Accession Number: 20050606-0049.

Comment Date: 5 p.m. Eastern Time on Thursday, June 23, 2005.

Docket Numbers: ER05-429-002.

Applicants: PacifiCorp.

Description: PacifiCorp submits Restated and Amended Transmission Agreement with Tri-State Generation and Transmission Association, Inc. in compliance with FERC's 3/1/05 letter order under ER05-429.

Filed Date: 06/01/2005.

Accession Number: 20050606-0051.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 22, 2005.

Docket Numbers: ER05-791-001.

Applicants: El Segundo Power, LLC.

Description: El Segundo Power, LLC submits response to the interventions & comments filed by the California System Operator Corporation dated April 27, 2005 and supplemental protest dated May 9, 2005 and also submits Substitute First Revised Sheet No. 129 under its Rate Schedule FERC No. 2

Filed Date: 05/27/2005.

Accession Number: 20050531-0112.

Comment Date: 5 p.m. Eastern Time on Friday, June 17, 2005.

Docket Numbers: ER05-737-001.

Applicants: Commerce Energy Inc.

Description: Commerce Energy Inc submits its triennial market power review in support of its market based rate authority under ER05-737.

Filed Date: 05/31/2005.

Accession Number: 20050602-0039.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 21, 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 than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5-3836 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2210-090]

Appalachian Power Company; Notice of Availability of Environmental Assessment

July 13, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for Appalachian Power Company's application requesting Commission approval of a shoreline management

plan for the Smith Mountain Pumped Storage Project, FERC No. 2210. This project is located on the Roanoke River, in Bedford, Pittsylvania, Franklin, and Campbell Counties, Virginia.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission Order entitled "Order Modifying and Approving Shoreline Management Plan" issued on July 5, 2005 (See 112 FERC ¶ 61,026) which is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free (866) 208-3676, or for TTY, contact (202) 502-8659.

For Further Information Contact: Heather Campbell at (202) 502-6182.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3817 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2984-042]

S.D. Warren Company; Notice of Availability of Draft Environmental Assessment

July 11, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has reviewed the application for new license for the Eel Weir Project, located at the outlet of Sebago Lake, and has prepared a draft Environmental Assessment (EA) for the project. In the draft EA, Commission staff analyzed the potential environmental effects of relicensing the project and concludes that issuing a new license for the project, with appropriate environmental measures, would not constitute a major Federal action that would significantly affect the quality of the human environment.

Copies of the draft EA are available for review in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. You may register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or any other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 2984-042 to all comments. Comments may be filed electronically via the Internet, in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. For further information, please contact Allan Creamer by telephone at (202) 502-8365 or by e-mail at allan.creamer@ferc.gov.

Magalie R. Salas,
Secretary.

[FR Doc. E5-3827 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

July 13, 2005.

Take notice that the following application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Non-Project Use of Project Lands and Waters.
- b. *Project No:* 2232-491.
- c. *Date Filed:* June 7, 2004.
- d. *Applicant:* Duke Power, a division of Duke Energy Corporation.
- e. *Name of Project:* Catawba-Wateree Project.

f. *Location:* This project is located on the Catawba and Wateree Rivers, in nine counties in North Carolina (Burke, Alexander, McDowell, Iredell, Caldwell, Lincoln, Catawba, Gaston, and

Mecklenburg Counties) and five counties in South Carolina (York, Chester, Lancaster, Fairfield and Kershaw Counties). This project does not occupy any Tribal or Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a), 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Lake Management Representative; Duke Energy Corporation; P.O. Box 1006; Charlotte, NC. 28201-1006; (704) 382-8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 502-6175 or by e-mail: Brian.Romanek@ferc.gov.

j. *Deadline for filing comments and/or motions:* August 15, 2005.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P-2232-491) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* Duke Power, licensee for the Catawba-Wateree Hydroelectric Project, has requested Commission authorization to allow Southpointe Homeowners Association, Inc. (Southpointe) to modify plans for a marina approved by "Order Approving Non-Project Use of Project Lands", issued February 10, 1999. Southpointe proposes to modify the marina design and reduce the number of boat slips from the approved 132 to 93. Southpointe proposes to also install 1,440 linear feet of rip rap along the shoreline.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at <http://www.ferc.gov>, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, contact (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title “COMMENTS”, “RECOMMENDATIONS FOR TERMS AND CONDITIONS”, “PROTEST”, OR “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5-3818 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 400-043 and 12589-000—Colorado]

Public Service Company of Colorado; Notice of Scoping Meetings and Site Visits

July 13, 2005.

a. *Type of Filings:* Notice of Intent to File License Applications for New Licenses; Pre-Application Documents; Commencement of Licensing Proceedings.

b. *Project Nos.:* 400-043 and 12589-000.

c. *Dated Filed:* May 20, 2005.

d. *Submitted By:* Public Service Company of Colorado (PSCo)

e. *Name of Projects:* Tacoma Hydroelectric Project No. 12589 and Ames Hydroelectric Project No. 400.

f. *Locations:* The Tacoma Hydroelectric Project is located on Cascade Creek, Little Cascade Creek, Elbert Creek, and the Animas River in La Plata and San Juan Counties, Colorado. The Tacoma Project occupies lands of the San Juan National Forest.

The Ames Hydroelectric Project is located on the Lake Fork, Howards Fork, and South Fork of the San Miguel River, in San Miguel County, Colorado. The Ames Project occupies lands of the Uncompahgre National Forest.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Alfred Hughes, Supervisor, Hydro West, Xcel Energy, P.O. Box 8098, Durango, Colorado 81301 (970) 247-8363.

i. *FERC Contact:* David Turner (202) 502-6091 or via e-mail at david.turner@ferc.gov.

j. PSCo filed Pre-Application Documents (PADs) for the Tacoma and Ames Projects, including proposed process plans and schedules, with the Commission pursuant to 18 CFR 5.6 of the Commission's regulations. PSCo is seeking a separate license for each development; both are currently licensed under the Tacoma-Ames Project No. 400.

k. Copies of the PADs and Scoping Document 1 (SD1) are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (<http://www.ferc.gov>), using the “eLibrary” link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at <http://ferc.gov/esubscribenow.htm> to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

l. With this notice, we are soliciting comments on SD1. All comments on SD1 should be sent to the address above in paragraph h. In addition, all comments on the PADs and SD1, study requests, requests for cooperating agency status, and all communications to Commission staff related to the merits of the potential applications (original and eight copies) must be filed with the Commission at the following address: Magalie R. Salas, Secretary, Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission relevant to the Tacoma Hydroelectric Project must include on the first page, the project name, (Tacoma Hydroelectric Project) and number (P-12589-000), and bear the heading, as appropriate, “Comments on Scoping Document 1.” All filings with the Commission relevant to the Ames Project must include on the first page, the project name (Ames Hydroelectric Project) and number (P-400-043) on the first page, and the appropriate heading as noted above. Any individual or entity interested in commenting on SD1 must do so by September 20, 2005.

Comments on SD1 and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the “e-filing” link.

m. At this time, Commission staff intends to prepare a single Environmental Assessment for the project, in accordance with the National Environmental Policy Act.

Scoping Meetings

We will hold two scoping meetings for each project at the times and places noted below. The daytime meetings will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meetings are primarily for receiving input from the public. We invite all interested individuals, organizations, Indian tribes, and agencies to attend one or all of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Tacoma Scoping Meeting

Evening Scoping Meeting

Date and Time: August 9, 2005, from 7 p.m. to 9 p.m. (MST).

Location: Doubletree Hotel Durango, 501 Camino del Rio, Durango, Colorado.

Daytime Scoping Meeting

Date and Time: August 10, 2005, from 9 a.m. to 3 p.m. (MST).

Location: Doubletree Hotel Durango, 501 Camino del Rio, Durango, Colorado.

AMES Scoping Meeting*Evening Scoping Meeting*

Date and Time: August 11, 2005, from 7 p.m. to 9 p.m. (MST).

Location: Telluride Conference Center, 580 Mountain Village Boulevard, Telluride, Colorado.

Daytime Scoping Meeting

Date and Time: August 12, 2005, from 9 a.m. to 3 p.m. (MST).

Location: Telluride Conference Center, 580 Mountain Village Boulevard, Telluride, Colorado.

For Directions: Contact Alfred Hughes at (970) 247-8363.

SD1, which outlines the subject areas to be addressed in the environmental document, has been mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph k. Depending on the extent of comments received, a Scoping Document 2 (SD2) may or may not be issued.

Site Visits

A site visit will be held for each project. Those interested in participating in either the Tacoma or Ames project site visits must notify Alfred Hughes of their intent at 970-247-8363 by August 1, 2005. All participants attending either site visit should be prepared to provide their own transportation. Anyone with questions about the site visits (or for directions) should contact Alfred Hughes. Details for each site visit are provided below.

Tacoma Site Visit

The Tacoma Project site visit will be held on August 9, 2005. All persons interested in seeing the Tacoma Project should meet at the Electra Sporting Club House parking lot on Electra Lake at 12 p.m. Due to access constraints, we will not be touring the powerhouse. Contact Alfred Hughes to inquire about separate tours of the powerhouse.

Ames Site Visit

The Ames Project site visit will be held on August 11, 2005. All persons interested in seeing the Ames Project should meet at the project recreation facilities on Trout Lake, immediately off of State Highway 145 at 8:30 a.m.

Scoping Meeting Objectives

At the scoping meetings, staff will: (1) Present the proposed list of issues to be addressed in the EA; (2) review and discuss existing conditions and resource

agency management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss requests by any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the Pre-Application Document in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item k of this notice.

Scoping Meeting Procedures

The scoping meetings will be recorded by a stenographer and will become part of the formal Commission records for the projects.

n. A notice of intent to file license applications, filing PADs, solicitation of comments on the PAD and SD1, solicitation of study requests, and commencement of proceedings will be issued by July 20, 2005, setting the date for filing comments on the PAD and study requests in accordance with Commission regulations and the proposed process plan.

Magalie R. Salas,

Secretary.

[FR Doc. E5-3819 Filed 7-18-05; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OARM-2005-0001, FRL-7940-4]

Agency Information Collection Activities: Proposed Collection; Comment Request; General Administrative Requirements for Assistance Programs, EPA ICR Number 0938.11, OMB Control Number 2030-0020.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is

a request to renew an existing approved collection. This ICR is scheduled to expire on December 31, 2005. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 19, 2005.

ADDRESSES: Submit your comments, referencing Docket ID Number OARM-2005-0001, to EPA online using EDOCKET (our preferred method), by e-mail to oei.docket@epa.gov, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

William G. Hedling, Office of Grants and Debarment, Grants Administration Division, Mail Code 3903R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-5377; fax number: (202) 565-2468; e-mail address: Hedling.William@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID Number OARM-2005-0001, which is available for public viewing at the Office of Environmental Information 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 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Office of Environmental Information Docket is (202) 566-1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at <http://www.epa.gov/edocket>. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or

other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Affected entities: Entities potentially affected by this action are those which apply for EPA assistance.

Title: General Administrative Requirements for Assistance Programs.

Abstract: The information is collected from applicants/recipients of EPA assistance to monitor adherence to the programmatic and administrative requirements of the Agency's financial assistance program. It is used to make awards, pay recipients, and collect information on how Federal funds are being spent. EPA needs this information to meet its Federal stewardship responsibilities. This ICR renewal requests authorization for the collection of information under EPA's General Regulation for Assistance Programs, which establishes minimum management requirements for all recipients of EPA grants or cooperative agreements (assistance agreements). Recipients must respond to these information requests to obtain and/or retain a benefit (Federal funds). 40 CFR part 30, "Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-profit Organizations," includes the management requirements for potential grantees from non-profit organizations. 40 CFR part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State, tribal and local governments," includes the management responsibilities for potential State and local government grantees. These regulations include only those provisions mandated by statute, required by OMB Circulars, or added by EPA to ensure sound and effective financial assistance management. The OMB 83-I Form associated with this ICR combines all of these requirements under OMB Control Number 2030-0020. The information required by these regulations will be used by EPA award

officials to make assistance awards and assistance payments and to verify that the recipient is using Federal funds appropriately to comply with OMB Circulars A-21, A-87, A-102, A-110, A-122, A-128, and A-133, which set forth the pre-award, post-award, and after-the-grant requirements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The annual reporting burden for this collection is estimated to average 33 hours per application. The estimated annual number of respondents is 5,350. The estimated total annual burden hours on respondents is 176,569 hours. The frequency of collection is as required. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 14, 2005.

Howard Corcoran,

Director, Office of Grants and Debarment.

[FR Doc. 05-14190 Filed 7-18-05; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 70 *FR* 39774; Monday, July 11, 2005.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Monday, July 18, 2005, 9 a.m. eastern time.

CHANGE IN THE MEETING:

OPEN SESSION:

Item No. 2. FEPA Designations for Springfield, Illinois Department of Community Relations & Reading, Pennsylvania Human Relations Commission has been removed from the Agenda.

Item No. 3. Certification of Eight FEP Agencies has been removed from the Agenda.

CONTACT FOR FURTHER INFORMATION:

Stephen Llewellyn, Acting Executive Officer, on (202) 663-4070.

Dated: July 14, 2005.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 05-14202 Filed 7-14-05; 4:0 pm]

BILLING CODE 6750-06-M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 2, 2005.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director,

Regional and Community Bank Group)
101 Market Street, San Francisco,
California 94105-1579:

1. *Marianne Boyd Johnson*, Las Vegas, Nevada; to acquire approximately 22.4 percent of the voting shares of Western Alliance Bancorporation, Las Vegas, Nevada, and thereby indirectly acquire voting shares of BankWest of Nevada, Las Vegas, Nevada, Torrey Pines Bank, San Diego, California, and Alliance Bank of Arizona, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, July 13, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-14167 Filed 7-18-05; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 05-13519) published on pages 39775-39776 for the issue for Monday, July 11, 2005.

Under the Federal Reserve Bank of St. Louis heading, the entry for Charles Hardcastle, Bowling Green, Kentucky, is revised to read as follows:

A. Federal Reserve Bank of St. Louis
(Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Charles Anderson Hardcastle*, Bowling Green, Kentucky, individually and as a member of the Hardcastle Control Group, which also includes Carolyn Hardcastle, Bowling Green, Kentucky; Colleen Hardcastle, Oakland, New Jersey; Cheryl Anderson; Patrick Anderson; Laura Anderson; and Erin Anderson; all of Lexington, Kentucky; to acquire voting shares of Citizens First Corporation, Bowling Green, Kentucky, and thereby indirectly acquire Citizens First Bank, Bowling Green, Kentucky.

Comments on this application must be received by July 25, 2005.

Board of Governors of the Federal Reserve System, July 13, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05-14168 Filed 7-18-05; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency For Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Dissertation grant application, "The Economics of Mother's Milk Feedings in the Neonatal Intensive Care Unit" is to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the application. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: The Economics of Mother's Milk Feedings in the Neonatal Intensive Care Unit.

Date: July 19, 2005 (open on July 19 from 1 p.m. to 1:15 p.m. and closed for the remainder of the telephone conference call meeting).

Place: AHRQ, John M. Eisenberg Building, 540 Gaither Road, 2nd Floor Conference Room, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, telephone (301) 427-1554.

Agenda items for this meeting are subject to change as priorities dictate.

This notice is being published less than 15 days prior to the July 19 meeting, due to the time constraints of reviews and funding cycles.

Dated: July 11, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05-14182 Filed 7-18-05; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for the Announcement of Availability of Funds for Grants for Family Planning Service Delivery Improvement Research are to be reviewed and discussed at this meeting. This program is sponsored by the Office of Population Affairs. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Announcement of Availability of Funds for Grants for Family Planning Service Delivery Improvement Research.

Date: August 9, 2005 (open on August 9 from 8:15 a.m. and closed for the remainder of the meeting).

Place: John M. Eisenberg Building, AHRQ Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room

2038, Rockville, Maryland 20850, telephone (301) 427-1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 11, 2005.

Carolyn M. Clancy,
Director.

[FR Doc. 05-14183 Filed 7-18-05; 8:45 am]

BILLING CODE 4160-10-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Single Gene Disorders Resource Network

Announcement Type: New.

Funding Opportunity Number: AA092.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent (LOI) Deadline: July 29, 2005.

Application Deadline: August 18, 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].

Background: There are over 6000 known single gene disorders, including over 1650 with identified genes. Single gene disorders occur in about one in 300 births, and account for 13 percent of in-patients in pediatric hospital and three to five percent of pediatric deaths. The National Center on Birth Defects and Developmental Disabilities (NCBDDD) seeks to ensure the optimal outcome of people with disabling or potential disabling pediatric single gene conditions and their families, by developing surveillance systems that meet challenges of single gene disorders, improving screening and diagnosis, and improving services to patients and families. Genetic disorders raise different issues for health care providers and families than do non-genetic disorders because genetic disorders have implications for other family members, and raise psychosocial issues (such as guilt, blame and stigmatization). Lessons learned from public health activities in single gene disorders can be applied to complex disorders as their etiologies become elucidated.

This cooperative agreement will fund the development of a national resource network for single gene disorders. Initial funding will support projects related to Duchenne and Becker Muscular Dystrophy (DBMD) and Fragile X

syndrome (FXS). The proposed National Network will have the capacity to expand to other single gene disorders.

Purpose: The purpose of the program is to develop, implement, and evaluate a Network for Single Gene Disorders, focusing specifically on DBMD and FXS. This program addresses the "Healthy People 2010" focus areas of Disability and Secondary Conditions; Mental Health and Mental Health Disorders; and 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/ATSDR. 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:

Applicants may apply for funding under part A and/or part B. Please note that if applicants choose to apply for both part A and part B, applicants may submit consolidated applications addressing the requirements of both part A and part B under one application.

Awardee activities for part A of this program are as follows:

- Increase access to accurate and scientifically valid information on the etiology, diagnosis, and treatment of DBMD for end users including families, educators, health professionals, allied health caregivers, and the general public. The awardee will specifically assemble and/or develop informational materials that: (1) Reflect expert opinion, evidence-based knowledge and current clinical practice, and (2) respond to the needs of individuals and families affected by DBMD. These informational materials will be disseminated to the target populations.

- Assess current educational and outreach materials related to DBMD targeted at families with DBMD and the general public. Develop and/or modify, implement and evaluate educational materials for families with DBMD and the general public, including information on the etiology, clinical course, treatment options, and available services (including services supported by Health Resources and Services Administration, the Administration for Children and Families/Administration on Developmental Disabilities, and

other DHHS-supported efforts that target families of children with disabilities). Content of materials includes issues specific to single gene disorders, such as genetic counseling.

- Assess current educational and outreach materials related to DBMD targeted at health care providers. Develop and/or modify, implement and evaluate educational materials for providers and students, focusing on recognition, diagnosis, referral and treatment. Content of materials includes current diagnostic and treatment standards or guidelines; and issues specific to single gene disorders, such as genetic counseling.

- Disseminate the information on DBMD widely within the targeted group including families, educators, health professionals, allied health caregivers, and the general public. This may be new or existing materials in a variety of formats including written, video, CD, and World Wide Web. Ensure the dissemination plan for the materials is developed, methods for reaching underserved and minority communities are described and justified; and accurate information about diagnosis and treatment of DBMD is available to various stakeholders, *i.e.*, practitioners, families, teachers, and other caregivers.

- Coordinate educational activities with other community-based and community-wide providers and organizations that offer services or direct education messages to U.S. residents that have DBMD and their providers.

- Hire and train staff as necessary to implement education and outreach activities for DBMD.

- Increase opportunities for regular and ongoing DBMD training and education available to persons within the targeted audiences.

- Identify core competencies about DBMD for medical and allied health students.

- Evaluate the core competencies for appropriateness and validity based on needs of the audiences and on scientific research.

- Develop methods to ensure that materials and resources for DBMD education and training are easily accessible.

- Coordinate activities with other awardees.

Awardee activities for part B of this program are as follows:

- Increase access to accurate and scientifically valid information on the etiology, diagnosis, and treatment of FXS for end users including health professionals, allied health caregivers, and students. The awardee will specifically assemble and/or develop

informational materials that: (1) reflect expert opinion, evidence-based knowledge and current clinical practice; and (2) respond to the needs of individuals and families affected by FXS. These informational materials will be disseminated to the target populations.

- Assess current educational and outreach materials related to FXS targeted at health care providers. Develop and/or modify, implement and evaluate educational materials for providers and students, focusing on recognition, diagnosis, referral and treatment. Content of materials includes current diagnostic and treatment standards or guidelines; and issues specific to single gene disorders, such as genetic counseling.

- Disseminate the information on FXS widely within the targeted group including health professionals, allied health caregivers, and students. This may be new or existing materials in a variety of formats including written, video, CD and World Wide Web. Ensure the dissemination plan for the materials is developed, methods for reaching under-served and minority communities are described and justified, and accurate information about diagnosis and treatment of FXS is available to various stakeholders, i.e., practitioners, teachers, and other caregivers.

- Coordinate educational activities with other community-based and community-wide providers and organizations that offer services or direct education messages to U.S. residents who have FXS and their providers.

- Hire and train staff as necessary to implement education and outreach activities for FXS.

- Increase opportunities for regular and ongoing FXS training and education available to persons within the targeted audiences.

- Identify core competencies about FXS for medical and allied health students.

- Evaluate the core competencies for appropriateness and validity based on needs of the audiences and on scientific research.

- Develop methods to ensure that materials and resources for FXS education and training are easily accessible.

- Coordinate activities with other awardees.

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 coordination of activities where possible.

- Assist recipients in coordination of activities with those of related partner organizations, including HRSA maternal and child health, Community Health Centers and OPA family planning.

- Assist recipients in developing and maintaining working relationships with stakeholder organizations.

- Provide technical assistance in assessing and prioritizing training and educational needs and in planning, implementing, and evaluating training and educational activities.

- Provide technical assistance in developing and evaluating innovative curriculum approaches, instructional strategies, and materials.

II. Award Information

Part A: Duchenne and Becker Muscular Dystrophy

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$600,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: \$600,000 (This amount is for the first 12-month budget period, and includes both direct and indirect costs).

Floor of Award Range: \$500,000.

Ceiling of Award Range: \$600,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Part B: Fragile X Syndrome

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: \$250,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: August 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

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 Mariana 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 well-established non-profit organization with experience in: (1) Assisting parents and families of people with genetic disorders; (2) conducting a national medical and public education agenda that focuses on producing valuable literature for families with genetic disorders, health care providers, and allied health caregivers; and (3) communicating research findings effectively to national, regional, state and local level media outlets in coordination with partners.

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. Application forms and instructions are available on the CDC web site, at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

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. Application forms can be mailed.

IV.2. Content and Form of Application Submission:

Your LOI must be written in the following format:

- Maximum number of pages: Two
- Font size: 12-point un-reduced
- 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

- Intent to apply under part A and/or part B of this 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 for part A or part B, 30 for parts A and B combined. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point un-reduced
- 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 the problem of single gene disorders including DBMD and/or FXS and the justification of the need for establishment of the Single Gene Disorders Resource Network.
- 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 description of relationships with voluntary health organizations and other organizations that offer services or direct education messages to U.S. residents that have single gene disorders including DBMD and/or FXS and their providers dedicated; and a description of a plan to involve these organizations in the development, implementation and evaluation of this project.

- A detailed first year's budget for the cooperative agreement with future annual projections. Awards will be made for a project period of up to five years. (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 Vitae
- 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

Letter of Intent (LOI) Deadline Date: July 29, 2005.

CDC requests that you send a LOI if you intend to apply for this program. The LOI 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 18, 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 your 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, customer service can be reached by E-mail at 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:

Applicants should submit the original and two hard copies of the application by mail or express delivery service to: Technical Information Management [RFA# AA092], 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. Capacity to Conduct Project Activities and Begin Project Operations in a Timely Fashion (30%)

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 as well as facilities for conducting training/educational sessions. The extent to which the organization has

with experience in: (1) Assisting parents and families of people with genetic disorders (2) conducting a national medical and public education agenda that focuses on producing valuable literature for families with genetic disorders, health care providers, and allied health caregivers (3) communicating research findings effectively to national, regional, state and local level media outlets in coordination with partners.

2. Applicant's Understanding of the Problem (20%)

The extent to which the applicant demonstrates an understanding of the resource needs related to single gene disorders, including DBMD and/or FXS, and the importance of educating medical and allied health students and practitioners about these conditions.

3. Goals and Objectives (20%)

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.

4. Collaboration with Voluntary Health and Related Organizations (15%)

The extent to which the applicant has provided a full and comprehensive description of partnerships with voluntary health organizations and other organizations that offer services or direct education messages to U.S. residents that have genetic disorders including DBMD and/or FXS and their providers; and a description of a plan to involve these organizations in the development, implementation and evaluation of this project.

5. Plan of Operation (15%)

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.

6. 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.

7. Human Subjects Review (not scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

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 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 the review panel. Applicants that apply under both part A and part B will receive separate scores for each part. CDC will provide justification for any decision to fund out of rank order. Subsequent to the formal review of all competitive applications, a second level of review will be conducted by senior CDC program staff. This review will not revisit the scientific merit of the applications, but will evaluate the overall budget implications of the applications against funding ceilings; they may not make recommendations as to the final ordering of the top ranked applications for part A and part B, and they may not actually change the ranking order (or scores). It is possible that the second level of review may recommend funding the highest ranked proposal under part A (or part B) and also funding that same organization under its application for the other part of the announcement. That could occur in the event that an organization with the highest ranking in one part ranks among the highest three applicants in the other part. This would be done to take into account economies of scale and establish the capacity to conduct non-redundant programs to best meet the purposes of this announcement. In such a case, the total approved budget may be less than the sum of the two applications due to staff time commitment duplications and other considerations.

V.3. Anticipated Announcement and Award Dates

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: Mildred Garner, Grants Management Officer, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341; Telephone: (770) 488-2745; E-mail: mqq4@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 13, 2005.

Alan A. Kotch,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05-14166 Filed 7-18-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meetings: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease

Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Intervention for Individuals with Fetal Alcohol Syndrome: Transitioning Science to Community Project, Request for Application (RFA) #DD 05-079 and Implementing Community-Level Strategies for Fetal Alcohol Syndrome Prevention and Surveillance in South Africa, RFA #DD 05-118.

Times and Dates: 1 p.m.-5 p.m., August 3, 2005 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92-463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to: Intervention for Individuals with Fetal Alcohol Syndrome: Transitioning Science to Community Project, Request for Application (RFA) #DD 05-079 and Implementing Community-Level Strategies for Fetal Alcohol Syndrome Prevention and Surveillance in South Africa, RFA #DD 05-118.

For Further Information Contact: Pamela J. Wilkerson, MPA, Scientific Review Administrator, 24 Executive Park Drive, NE., Mailstop E74, Atlanta, GA 30333, Telephone (404) 498-2556.

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 12, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05-14162 Filed 7-18-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D-0167] (formerly Docket No. 03D-0167)

Guidance for Industry on Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry

(#79) entitled "Guidance for Industry: Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine (CVM)." This guidance document describes dispute resolution procedures by which sponsors, applicants, or manufacturers of FDA-regulated products for animals may request review of science-based decisions. This guidance does not address procedures for handling issues associated with FDA's new initiative to enhance pharmaceutical good manufacturing practices (GMPs).

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on this guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Comments should be identified with the full title of the guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Marcia Larkins, Center for Veterinary Medicine (HFV-7), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301-827-4535, e-mail: mlarkins@cvm.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 19, 2003 (68 FR 27094), FDA published a notice of availability for a draft guidance for industry entitled "Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine (CVM)" giving interested persons until August 4, 2003, to submit comments on the draft guidance and until July 18, 2003, to comment on the information collection. FDA considered all comments received and, where appropriate, made changes in the guidance.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance

practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on dispute resolution and the procedures regarding requests for review of scientific controversies relating to decisions affecting animal drugs or other products regulated by CVM. The document does not create or confer any rights for or on any person and will not operate to bind FDA or the public. Alternative methods may be used as long as they satisfy the requirements of the applicable statutes and regulations. If an applicant wants to discuss an alternative approach, the applicant should contact FDA staff responsible for implementing the guidance. If the applicant cannot identify appropriate FDA staff, the applicant should call the CVM Ombudsman at 301-827-4535.

III. Paperwork Reduction Act of 1995

FDA is announcing that a collection of information entitled "Final Guidance for Industry on Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. In the **Federal Register** of May 19, 2003 (68 FR 27094), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910-0566. The approval expires on June 30, 2008. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

IV. Comments

As with all FDA's guidances, the public is encouraged to submit written or electronic comments with new data or other new information pertinent to this guidance. FDA periodically will review the comments in the docket, and where appropriate, will amend the guidance. The agency will notify the public of any such amendments through a document in the **Federal Register**.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the documents and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Copies of the guidance document entitled "Guidance for Industry: Dispute Resolution Procedures for Science-Based Decisions on Products Regulated by the Center for Veterinary Medicine (CVM)" may be obtained on the Internet from the CVM home page at <http://www.fda.gov/cvm>.

Dated: July 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-14137 Filed 7-18-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of SAMHSA's Anticipated FY 2006 Grant Funding Opportunities

SUMMARY: This notice is to inform the public of SAMHSA's anticipated grant funding opportunities for FY 2006, based on the President's FY 2006 budget request. All information provided is tentative and preliminary. These plans may change and final figures will not be available until after SAMHSA receives its 2006 appropriation.

In January 2005, SAMHSA ceased publishing notices of grant funding opportunities in the **Federal Register**, consistent with the Department of Health and Human Services management objectives. Announcements are instead posted on <http://www.Grants.gov> and on SAMHSA's Web site at <http://www.samhsa.gov>. Interested applicants should visit these Web sites for specific information about these programs as it becomes available. Applicants should also be aware that all the necessary information to apply for grant funds will continue to be available at SAMHSA's two national clearinghouses: the National Clearinghouse for Alcohol and Drug Information (NCADI)—1-800-729-6686—for substance abuse prevention or treatment grants; and the National Mental Health Information Center—1-800-789-CMHS (2647)—for mental health grants.

FOR FURTHER INFORMATION CONTACT:

Cathy J. Friedman, M.A., SAMHSA, 1 Choke Cherry Road, Room 8-1097, Rockville, MD 20857; phone (240) 276-2316; e-mail: cathy.friedman@samhsa.hhs.gov.

BILLING CODE 4162-20-P

**Substance Abuse and Mental Health Services Administration (SAMHSA)
Anticipated FY 2006 Grant Funding Opportunities**

Name of Grant Program	Total Dollars	Number /Size of Awards	Description	Eligibility	Target Publication Date
CMHS Mental Health State Incentive Grants	\$6 million	3/ Approx. \$1.5-\$3.0 mil.	The purpose of the Mental Health State Incentive Grants program is to advance, state by state, the vision and goals of the President's New Freedom Commission on Mental Health, in order to transform the nation's mental health system. The MHT SIGs will provide support for an array of infrastructure improvement activities to help grantees build a solid foundation for delivering and sustaining mental health and related services.	Eligibility is limited to the immediate office of the Chief Executive Officer in States, Territories, the District of Columbia and Federally-recognized Tribes or Tribal Organizations. Eligibility is limited because applicants for the MHT SIG must have the ability to leverage and coordinate multiple sources of funding and other resources in order to achieve the goals of the President's New Freedom Commission on Mental Health.	February 2006
HIV/AIDS Mental Health Services Capacity Building in Minority Communities	\$4.6 million	11/ Approx. \$400,000	The purpose of the HIV/AIDS Mental Health Services Capacity Building in Minority Communities grant program is to expand service capacity targeted to meet unmet mental health treatment needs of individuals living with HIV/AIDS who are African American, Hispanic/Latino, and/or from other racial and ethnic minority communities.	Applications may be submitted by domestic private/public non-profit community-based organizations that serve predominantly racial and ethnic minorities disproportionately impacted by the HIV/AIDS epidemic.	December 2005

Name of Grant Program	Total Dollars	Number /Size of Awards	Description	Eligibility	Target Publication Date
CSAP					
Conference Grants	\$.05 million	2/ \$25,000- \$50,000	The purpose of the Conference Grants program is to support domestic conferences developed for knowledge synthesis and dissemination. The goal of SAMHSA's knowledge synthesis and dissemination activities is to improve the quality of the Nation's substance abuse and mental health treatment and prevention services and systems.	Applications may be submitted by public and domestic private non-profit and for profit entities. An individual is not eligible to receive grant support for a conference.	July 2005
Strategic Prevention Framework for State Incentive Grants (SPF SIG)	\$19.7 million	7/ Approx. \$2.8 mil.	The purpose of the Strategic Prevention Framework for State Incentive Grants (SPF SIG) program is to provide funding for States to implement SAMHSA's Strategic Prevention Framework in order to: prevent the onset and reduce the progression of substance abuse, including childhood and underage drinking; reduce substance abuse-related problems in communities; and build prevention capacity and infrastructure at the State and community levels.	Eligibility is limited to the immediate office of the Governor in those States and Territories that currently receive the SAPT Block Grant, and to the Chief Executive Officer of a federally recognized tribe.	February 2006
CSAT					
Access to Recovery (ATR)	\$50.8 million	7/ Approx. \$7.5 mil.	ATR is a Presidential initiative to provide client choice among substance abuse clinical treatment and recovery support service providers, expand access to a comprehensive array of clinical treatment and recovery support options (including faith-based programmatic options), and increase substance abuse treatment capacity.	Eligibility is limited to the immediate office of the Chief Executive (e.g., Governor) in the States, Territories, District of Columbia; or the head of a Tribal Organization. Current grantees are not eligible.	TBD

Name of Grant Program	Total Dollars	Number /Size of Awards	Description	Eligibility	Target Publication Date
Screening, Brief Intervention, Referral and Treatment (SBIRT)	\$5.6 million	2/ Approx. \$2.8 mil.	The purpose of the SBIRT grant program is to expand and enhance State substance abuse treatment service systems by expanding the State's continuum of care to include screening, brief intervention, referral, and brief treatment (SBIRT) in general medical and other community settings.	All States, Territories, and Federally recognized Indian tribes are eligible to apply but the applicant must be the immediate Office of the Governor of States (for Territories and Indian tribes, the Office of the Chief Executive Officer). Current grantees are not eligible.	TBD
Pregnant & Postpartum Women (PPW)	\$2.9 million	6/ Approx. \$500,000	The purpose of the PPW grant program is to expand the availability of comprehensive, high quality residential substance abuse treatment services for low-income women, age 18 and over, who are pregnant, postpartum or other parenting women, and their minor children, age 17 and under, who have limited access to quality health services.	Applications may be submitted by domestic private/public nonprofit entities, e.g., State, local or tribal governments; public or private universities and colleges; community and faith-based organizations; and tribal organizations.	January/February 2006
State Infrastructure Grants for Treatment of Persons with Co-Occurring Substance and Mental Disorders (COSIG)	\$2.7 million	3/ Approx. \$900,000	The purpose of the COSIG program is to provide funding for the States to develop or enhance their infrastructure to increase their capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based treatment services to persons with co-occurring substance abuse and mental disorders.	All States and Federally recognized Indian tribes are eligible to apply but the applicant must be the immediate Office of the Governor of States (for Indian tribes, the Office of the Chief Executive Officer). State-level agencies are not considered to be part of the immediate Office of the Governor. Current grantees are not eligible.	August 2005

Name of Grant Program	Total Dollars	Number /Size of Awards	Description	Eligibility	Target Publication Date
Targeted Capacity Expansion (TCE)	\$3.8 million	9-10/ Approx. \$400,000	The purpose of the TCE grant program is to address gaps in treatment capacity by supporting rapid and strategic responses to demands for alcohol and drug treatment services and/or innovative solutions to unmet needs in communities with serious, emerging substance abuse problems.	Eligible applicants are States, units of local government, and Tribes or tribal organizations.	January/February 2006*
Strengthening Access & Retention (STAR)	\$2.2 million	8/ Approx. \$275,000	The purpose of the STAR program is to enable States, Territories, Tribes and tribal organizations to implement system level improvements that increase client access and retention in substance abuse treatment and to track performance outcomes.	Eligible applicants are States, Territories, Tribes and tribal organizations.	November 2005
Recovery Community Services Program (RCSP)	\$2.5 million	7-8/ Approx. \$350,000	The purpose of the RCSP grant program is to develop, design, deliver, and document peer-driven recovery support services that help prevent relapse and promote long-term recovery from alcohol and drug use disorders.	Applications may be submitted by domestic private/public nonprofit entities, e.g., State, local or tribal governments; public or private universities and colleges; community and faith-based organizations; and tribal organizations.	August 2005
Family Therapy Models	\$8.7 million	29/ Approx. \$300,000	The purpose of Family Therapy Models is to fund providers to adopt the Assertive Community Reinforcement Approach (ACRA) within their adolescent SA treatment programs in order to provide an effective treatment intervention for youth and their families based on a practice with an evidence base of effectiveness. (ACRA is an effective treatment intervention from the CSAT CYT Study.)	Applications may be submitted by domestic private/public nonprofit entities, e.g., State, local or tribal governments; public or private universities and colleges; community and faith-based organizations; and tribal organizations.	November 2005

Name of Grant Program	Total Dollars	Number /Size of Awards	Description	Eligibility	Target Publication Date
Grants to Benefit Homeless Individuals (GBHI)	\$4.1 million	10/ Approx. \$400,000	The purpose of the Homeless Treatment grant program is to enable communities to expand and strengthen their treatment services for homeless individuals with substance abuse disorders, mental illness, or with co-occurring substance abuse disorders and mental illness.	Eligibility is restricted by statute to community-based public and private nonprofit entities. These entities include county governments, city or township governments, federally recognized Native American tribal governments, tribal organizations, community-based (including faith-based) organizations, and community-based State entities such as State colleges, universities and hospitals that propose to provide services under this program to the community. States are not eligible to apply under the statute.	September 2005
Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services (TCE/HIV)	\$4.4 million	9/ Approx. \$400,000-\$500,000	The purpose of the TCE/HIV grant program is to enhance and expand substance abuse treatment and/or outreach and pretreatment services in conjunction with HIV/AIDS services. The focus of this year's RFA is African American, Latino/Hispanic women, and/or other racial or ethnic communities highly affected by the twin epidemics of substance abuse and HIV/AIDS.	Applications may be submitted by domestic private/public nonprofit entities, e.g., State, local or tribal governments; public or private universities and colleges; community and faith-based organizations; and tribal organizations.	January/February 2006
Family and Juvenile Drug Courts	\$5.3 million	14/ Approx. \$400,000	The purpose of the Drug Courts grant program is to provide funds for treatment providers and the courts to provide alcohol and drug treatment, wrap-around services supporting SA treatment, assessment, case management, and program coordination to those in need of treatment drug court services.	Applications may be submitted by domestic private/public nonprofit entities, e.g., State, local or tribal governments; public or private universities and colleges; community and faith-based organizations; and tribal organizations.	January/February 2006*

- SAMHSA solicited applications for this program in FY 2005. If there are a significant number of high quality applications from the FY 2005 cycle that cannot be awarded in FY 2005 due to the lack of funds, SAMHSA may use funds available in FY 2006 to make awards to FY 2005 applicants in lieu of announcing the program for FY 2006.

Dated: July 12, 2005.

Daryl Kade,

Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05-14163 Filed 7-18-05; 8:45 am]

BILLING CODE 4162-20-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in August 2005.

A portion of the meeting will be open and will include a roll call, general announcements, Director's and Administrator's Reports, as well as presentations and discussions about Mental Health System Transformation.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed below as contact to make arrangements to comment or to request special accommodations for persons with disabilities.

The meeting also will include the review, discussion, and evaluation of grant applications. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information and a roster of Council members may be obtained by accessing the SAMHSA Advisory Committee Web site (<http://www.samhsa.gov>) or by communicating with the contact whose name and telephone number are listed below. A summary of the meeting and the transcript for the open session will also be available on the SAMHSA Advisory Committee Web site as soon as possible after the meeting.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: August 17-19, 2005.

Place: Sugarloaf Room, 1 Choke Cherry Road, Rockville, MD 20857.

Type: Closed: August 17, 2005 9 a.m.-3:30 p.m. Open: August 18, 2005 9 a.m.-5 p.m. August 19, 2005 9:30 a.m.-1 p.m.

Contact: Dianne McSwain, MS, Executive Secretary or: Tracey Cooper, Council Coordinator, 1 Choke Cherry Road, Room 6-1083, Rockville, Maryland 20857, telephone: (240) 276-1830, and fax (240) 276-1850; e-

mail: Dianne.McSwain@hhs.samhsa.gov, e-mail: Tracey.Cooper@hhs.samhsa.gov.

Dated: July 13, 2005.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 05-14157 Filed 7-18-05; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD09-05-006]

Final Implementation of Sectors Detroit, Sector Sault Ste. Marie, Sector Buffalo, and Sector Lake Michigan

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard previously announced the stand-up of Sectors Detroit, Sector Sault Ste. Marie, Sector Buffalo, and Sector Lake Michigan under this docket. This notice informs the public that the process is nearing completion for all Sectors in the Ninth Coast Guard District. All boundaries of areas of responsibility will shift on July 29, 2005, the date of stand-up of the last Sector, Sector Lake Michigan. The Commander of each Sector has the authority, responsibility and missions of its corresponding Group, Captain of the Port (COTP) and Marine Safety Offices. The Coast Guard has established a continuity of operations whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official or document.

DATES: The effective dates of Sector stand-up are: Sector Detroit on March 31, 2005; Sector Sault Ste. Marie on June 27, 2005; Sector Buffalo on July 22, 2005; and Sector Lake Michigan on July 29, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD09-05-006 and are available for inspection or copying at Commander, Ninth Coast Guard District (rpl), 1240 E. Ninth Street, Cleveland, Ohio 44199-2060 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Christopher Blomshield, Ninth District Planning Office at (216) 902-6101.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

This notice confirms the stand-up of all Sectors in the Ninth Coast Guard District and gives a detailed description of their respective boundaries. Boundaries of areas of responsibility for all Sectors will change simultaneously on July 29, 2005.

Sector Detroit is located at 110 Mt. Elliot Ave., Detroit, Michigan 48207-4380. Sector Detroit stood-up on March 31, 2005 and is composed of a Response Department, Prevention Department, and Logistics Department. As of March 31, 2005, Group/Marine Safety Office Detroit no longer exists as an organizational entity. On July 29, 2005, Marine Safety Office Toledo will be renamed Marine Safety Unit Toledo.

The Sector Detroit Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officer of Group/Marine Safety Office Detroit. As of July 29, 2005, the Sector Detroit Commander is designated: (a) Captain of the Port (COTP) for the Detroit, Toledo, and a portion of the Sault Ste. Marie COTP zones; (b) Federal Maritime Security Coordinator (FMSC) for the Detroit, Toledo, and a portion of the Sault Ste. Marie COTP zones; (c) Federal On Scene Coordinator (FOSC) for the Detroit, Toledo, and a portion of the Sault Ste. Marie COTP zones, consistent with the National Contingency Plan; (d) Officer in Charge of Marine Inspection (OCMI) for the Detroit, Toledo, and a portion of the Sault Ste. Marie Marine Inspection Zones and, (e) Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC and Acting OCMI. A continuity of operations order has been issued ensuring that all previous Group/Marine Safety Office Detroit, Marine Safety Office Toledo, and Group/Marine Safety Office Sault Ste. Marie practices and procedures will remain in effect until superseded by Commander, Sector Detroit. This continuity of operations order addresses existing COTP regulations, orders, directives and policies.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector Detroit.

Address: Commander, U.S. Coast Guard Sector Detroit, 110 Mt. Elliot Ave., Detroit, Michigan 48207-4380.

Contact: General Number, (313) 568-9580, Sector Commander: Captain Patrick Brennan; Deputy Sector Commander: Commander Christopher Roberge.

Chief, Prevention Department: (313) 568-9490.

Chief, Response Department: (313) 568-9521.

Chief, Logistics Department: (313) 568-9551.

Sector Detroit's boundaries are: "All navigable waters of the United States and contiguous land areas within the following boundaries: From the Ohio-Indiana boundary at latitude 41 degrees N.; then due east to longitude 82 degrees 25 minutes W.; then due north to the international boundary in Lake Erie; then northerly along the international boundary to latitude 45 degrees 35 minutes N.; then southwesterly to the shore of western Lake Huron at latitude 45 degrees 17.5 minutes N.; then southwesterly to latitude 44 degrees 43 minutes N., longitude 84 degrees 30 minutes W.; then due south to the Michigan-Ohio boundary; then westerly along the Michigan-Ohio boundary to the Ohio-Indiana boundary; then southerly along the Ohio-Indiana boundary to the starting point."

Sector Sault Ste. Marie is located at 337 Water Street, Sault Ste. Marie, Michigan 49783-9501. Sector Sault Ste. Marie is composed of a Response Department, Prevention Department, and Logistics Department. Effective June 27, 2005, Group/Marine Safety Office Sault Ste. Marie no longer exists as an organizational entity. On July 29, 2005 Marine Safety Office Duluth will be renamed Marine Safety Unit Duluth and the southern portions of the Sault Ste. Marie COTP zone transferred to Sector Detroit and Sector Lake Michigan.

The Sector Sault Ste. Marie Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officer of Group/Marine Safety Office Sault Ste. Marie. As of July 29, 2005, the Sector Sault Ste. Marie Commander is designated: (a) Captain of the Port (COTP) for the remainder of the Sault Ste. Marie and the Duluth COTP zones; (b) Federal Maritime Security Coordinator (FMSC) for the remainder of the Sault Ste. Marie and the Duluth COTP zones; (c) Federal On Scene Coordinator (FOSC) for the remainder of the Sault Ste. Marie and the Duluth COTP zones, consistent with the National Contingency Plan; (d) Officer in Charge of Marine Inspection (OCMI) for the remainder of the Sault Ste. Marie

and the Duluth Marine Inspection Zones and, (e) Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC and Acting OCMI. Marine Safety Unit Duluth retains COTP authority for the former Duluth COTP zone as a sub-zone of COTP Sault Ste. Marie. A continuity of operations order has been issued ensuring that all previous Group/Marine Safety Office Sault Ste. Marie and Marine Safety Office Duluth practices and procedures will remain in effect until superseded by Commander, Sector Sault Ste. Marie. This continuity of operations order addresses existing COTP regulations, orders, directives and policies.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector Sault Ste. Marie.

Address: Commander, U.S. Coast Guard Sector Sault Ste. Marie, 337 Water Street, Sault Ste. Marie, Michigan 49783-9501.

Contact: General Number, (906) 635-3228, Sector Commander: Captain E.Q. Kahler; Deputy Sector Commander: Commander Larry Hewett.

Chief, Prevention Department: (906) 635-3220.

Chief, Response Department: (906) 635-3231.

Chief, Logistics Department: (906) 635-3265.

The boundaries of the Sault Ste Marie Captain of the Port Zone and Area of Responsibility are: "All navigable waters of the United States and contiguous land areas within the following boundaries: From of the international boundary at latitude 45 degrees 35 minutes N.; then southwesterly to the shore of western Lake Huron at latitude 45 degrees 17.5 minutes N.; then southwesterly to latitude 44 degrees 43 minutes N., longitude 84 degrees 30 minutes W.; then northwesterly to the eastern shore of Lake Michigan at latitude 45 degrees 38 minutes N.; then northwesterly to latitude 45 degrees 50 minutes N., longitude 85 degrees 43 minutes W.; then southwesterly to latitude 45 degrees 41 minutes N., longitude 86 degrees 06 minutes W.; then northwesterly to latitude 46 degrees 20 minutes N., longitude 87 degrees 22 minutes W.; then due west to longitude 88 degrees 30 minutes W.; then northeasterly to the shore of Lake Superior at longitude 87 degrees 45 minutes W.; then northerly to Manitou Island Light, located at latitude 47 degrees 25 minutes N., longitude 87

degrees 35 minutes W.; then due north to the international boundary; then southeasterly along the international boundary to the starting point."

The boundaries of the Duluth Captain of the Port Sub-Zone and Area of Responsibility are: "All navigable waters of the United States and contiguous land areas within the following boundaries: From the intersection of the Minnesota-North Dakota boundary and the international boundary; then southerly along the Minnesota-North Dakota boundary to latitude 46 degrees 20 minutes N.; then due east to longitude 88 degrees 30 minutes W.; then northeasterly to the shore of Lake Superior at longitude 87 degrees 45 minutes W.; then northerly to Manitou Island Light, located at latitude 47 degrees 25 minutes N., longitude 87 degrees 35 minutes W.; then due north to the international boundary; then westerly along the international boundary to the starting point."

Sector Buffalo is located at 1 Fuhrmann Blvd., Buffalo, New York 14203-3189. Sector Buffalo is composed of a Response Department, Prevention Department, and Logistics Department. Effective July 22, 2005, Group Buffalo and Marine Safety Office Buffalo will no longer exist as organizational entities. On July 29, 2005, Marine Safety Office Cleveland will be renamed Marine Safety Unit Cleveland.

The Sector Buffalo Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officers of Group Buffalo and Marine Safety Office Buffalo. As of July 29, 2005, the Sector Buffalo Commander is designated: (a) Captain of the Port (COTP) for the Buffalo and Cleveland COTP zones; (b) Federal Maritime Security Coordinator (FMSC) for the Buffalo and Cleveland zones; (c) Federal On Scene Coordinator (FOSC) for the Buffalo and Cleveland COTP zones, consistent with the National Contingency Plan; (d) Officer in Charge of Marine Inspection (OCMI) for the Buffalo and Cleveland Marine Inspection Zones and, (e) Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC and Acting OCMI. A continuity of operations order has been issued ensuring that all previous Group Buffalo, Marine Safety Office Buffalo, and Marine Safety Office Cleveland practices and procedures will remain in effect until superseded by Commander,

Sector Buffalo. This continuity of operations order addresses existing COTP regulations, orders, directives and policies.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector Buffalo.

Address: Commander, U.S. Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203-3189.

Contact: General Number, (716) 843-9525, Sector Commander: Captain Scott Ferguson; Deputy Sector Commander: Commander Patrick Dowden.

Chief, Prevention Department: (716) 843-9525.

Chief, Response Department: (716) 843-9520.

Chief, Logistics Department: (716) 843-9525.

The boundaries of Sector Buffalo are: "All navigable waters of the United States and contiguous land areas within the following boundaries: From latitude 41 degrees N., longitude 82 degrees 25 minutes W.; then due east to longitude 78 degrees 55 minutes W.; then due north to latitude 42 degrees N.; then due east to longitude 74 degrees 39 minutes W.; then due north to the international boundary; then southeasterly along the international boundary to longitude 82 degrees 25 minutes W.; then due south to the starting point."

Sector Lake Michigan is located at 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207-1997. Sector Lake Michigan is composed of a Response Department, Prevention Department, and Logistics Department. Effective July 29, 2005, Group Milwaukee and Marine Safety Office Milwaukee will no longer exist as organizational entities. On July 29, 2005 Marine Safety Office Chicago will be renamed Marine Safety Unit Chicago and Group Grand Haven will be renamed Sector Field Office Grand Haven.

The Sector Lake Michigan Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officers of Group Milwaukee and Marine Safety Office Milwaukee. The Sector Lake Michigan Commander is designated: (a) Captain of the Port (COTP) for the Milwaukee, Chicago, and portions of the Sault Ste. Marie COTP zones; (b) Federal Maritime Security Coordinator (FMSC) for the Milwaukee, Chicago, and portions of the Sault Ste. Marie zones; (c) Federal On

Scene Coordinator (FOSC) for the Milwaukee, Chicago, and portions of the Sault Ste. Marie COTP zones, consistent with the National Contingency Plan; (d) Officer in Charge of Marine Inspection (OCMI) for the Milwaukee, Chicago, and portions of the Sault Ste. Marie Marine Inspection Zones and, (e) Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC and Acting OCMI. A continuity of operations order has been issued ensuring that all previous Group Milwaukee, Marine Safety Office Milwaukee, Marine Safety Office Chicago, and Group/Marine Safety Office Sault Ste. Marie practices and procedures will remain in effect until superseded by Commander, Sector Lake Michigan. This continuity of operations order addresses existing COTP regulations, orders, directives and policies.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones:

Name: Sector Lake Michigan.

Address: Commander, U.S. Coast Guard Sector Lake Michigan, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207-1997.

Contact: General Number, (414) 747-7100, Sector Commander: Captain Scott LaRochelle; Deputy Sector Commander: Commander Mark Hamilton.

Chief, Prevention Department: (414) 747-7157.

Chief, Response Department: (414) 747-7145.

Chief, Logistics Department: (414) 747-7100.

The boundaries of Sector Lake Michigan are: "All navigable waters of the United States and contiguous land areas within the following boundaries: From latitude 46 degrees 20 minutes N., 90 degrees W.; then due east to longitude 87 degrees 22 minutes W.; then southeasterly to latitude 45 degrees 41 minutes N., longitude 86 degrees 06 minutes W.; then northeasterly to latitude 45 degrees 50 minutes N., 85 degrees 43 minutes W.; then southeasterly to the shore of eastern Lake Michigan at latitude 45 degrees 38 minutes N.; then southeasterly to latitude 44 degrees 43 minutes W., longitude 84 degrees 30 minutes W.; then due south to the Michigan-Ohio boundary; then westerly along the Michigan-Ohio boundary to the Ohio-Indiana boundary; then southerly along the Ohio-Indiana boundary to latitude 41 degrees N.; then due west to longitude 90 degrees W.; then due north to the starting point."

Dated: July 11, 2005.

T. W. Sparks,

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

[FR Doc. 05-14105 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD07-05-091]

Implementation of Sector St. Petersburg

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the establishment of Sector St. Petersburg. The Sector St. Petersburg Commanding Officer will have the authority, responsibility and missions of a Group Commander, Captain of the Port (COTP) and Commanding Officer, Marine Safety Office (MSO). The Coast Guard has established a continuity of operations order whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official and/or document.

DATES: The effective date of this organizational change is July 11, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07-05-091 and are available for inspection or copying at District 7 Resources, 9th Floor, 909 SE 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Michael Jackson, District 7 Resources Program at 305-415-6706.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

This notice announces the establishment of Sector St. Petersburg. Upon creation of Sector St. Petersburg, Group St. Petersburg and MSO Tampa will be incorporated into the Sector and no longer exist as specific entities. Sector St. Petersburg will be composed of a Response Department, Prevention Department, and Logistics Department. All existing missions and functions performed by Group St. Petersburg and MSO Tampa should be realigned under this new organizational structure as of July 11, 2005.

Sector St. Petersburg is responsible for all Coast Guard missions in the Tampa/St. Petersburg marine inspection zone,

COTP zone, and Area of Responsibility (AOR). A continuity of operations order has been issued to address existing COTP regulations, orders, directives and policies.

The boundaries of these zones are comprised of the area starting at the intersection of the Florida coast with longitude 083°50' W (30° 00' N, 083° 50' W); mouth of the Fenholloway river, thence due north to a position 30°15' N, 083°50' W; thence due west to a position 30°15' N, 084°45' W; thence due north to the Florida-Georgia boundary at longitude 084°45' W; thence easterly along the Florida-Georgia boundary to longitude 083°00' W; thence southeasterly to 28°00' N 081°30' W; thence south to the northern Collier county boundary; thence eastward along the northern Collier county boundary to the intersection with Broward county; thence southerly along the eastern Collier county boundary to the intersection of the Collier and Monroe county boundaries; thence westerly along the southern Collier county boundary encompassing all of Collier county. The offshore area includes that portion of the Gulf of Mexico bounded by an imaginary line bearing 199°t from the intersection of the Florida coast at 30°00' N, 083°50' W to the exclusive economic zone (eez) boundary; bounded on the west by the outermost extent of the eez; and on the south at the Collier/Monroe counties coastal boundary line bearing 245°t from a point 25° 48.20' N, 081°20.65' W to the extent of the eez. All coordinates referenced use North American Datum 1983 (NAD 1983).

The Sector St. Petersburg Commander is vested with all rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer, Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officer, Marine Safety Office Tampa and the Commander, Group St. Petersburg.

The Sector St. Petersburg Commander shall be designated: (a) COTP for the zone described in 33 CFR 3.35–35; (b) Federal Maritime Security Coordinator (FMSC); (c) Federal On Scene Coordinator (FOSC) for the zone described in 33 CFR 3.35–35, consistent with the national contingency plan; (d) Officer In Charge of Marine Inspection (OCMI) for the zone described in 33 CFR 3.35–35. The Deputy Sector Commander may be designated alternate COTP, FMSC, FOSC, and Acting OCMI.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones.

Name: Sector St. Petersburg.

Addresses: Commander, U.S. Coast Guard Sector St. Petersburg, 600 8th Ave., SE., St. Petersburg, FL 33701, Chief, Prevention Department, 155 Columbia Drive, Tampa, FL 33606.

Contact: General Number: (727) 824–7638; Operations Center (Emergency): 1–866–881–1392; Sector Commander: (727) 824–7534; Deputy Sector Commander: (727) 824–7534; Chief, Response Department: (727) 824–7674; Chief, Logistics Department: (727) 824–7674; Chief, Prevention Department: (813) 228–2191.

Dated: July 6, 2005.

D.B. Peterman,

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

[FR Doc. 05–14104 Filed 7–18–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Sworn Statement of Refugee Applying for Admission Into the United States

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Sworn Statement of Refugee Applying for Admission into the United States (CBP Form G–646). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 19, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue,

NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates of the burden of the collection of information; ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Entry Summary and Continuation Sheet.

OMB Number: 1651–0115.

Form Number: CBP Form G–646.

Abstract: CBP Form G–646 is used by CBP to make a determination of whether the applicant is eligible for admission into the United States as a refugee.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 75,000.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 24,975.

Estimated Annualized Cost to the Public: N/A.

Dated: July 13, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05–14133 Filed 7–18–05; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[FEMA-1593-DR]

Alabama; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Alabama (FEMA-1593-DR), dated July 10, 2005, and related determinations.

DATES: *Effective Date:* July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Alabama is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 10, 2005:

Escambia County for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05-14121 Filed 7-18-05; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY**U.S. Citizenship and Immigration Services****Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request**

ACTION: 30-Day notice of information collection under review: Application for Naturalization, Form N-400.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 16, 2005 at 70 FR 25842, allowed for a 60-day public comment period. The USCIS received several comments and recommendations from the public regarding improvements to this information collection. We have taken them under consideration for the 2006 revisions to this form.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-400. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The USCIS uses the information collected to determine eligibility for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 700,000 responses at 6 hours and 8 minutes (6.13) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,291,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: July 14, 2005.

Richard A. Sloan,

Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05-14123 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY**U.S. Citizenship and Immigration Services****Agency Information Collection Activities: Extension of a Currently Approved Information Request; Comment Request**

ACTION: 30-day notice of information collection under review: Application for transfer of petition for naturalization; Form N-455.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal**

Register on May 16, 2005, at 70 FR 25841, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until [August 18, 2005.] This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overviews of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Transfer of Petition for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-455. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The form will be used by the applicant to request transfer of his or her petition to another court in accordance with section 405 of the Immigration and Nationality Act. The USCIS will also use this information to make recommendations to the court.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC, 20529; 202-272-8377.

Dated: June 21, 2005.

Richard A. Sloan,

*Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.*

[FR Doc. 05-14124 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request.

ACTION: 30-day notice of information collection under review: notice of immigration pilot program, File No. OMB-5.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The USCIS published a notice in the **Federal Register** on May 16, 2005 at 70 FR 25840. The notice allowed for a 60-day public review and comment period on the extension of a currently approved information collection. No public comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information 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 information collection.

(2) *Title of the Form/Collection:* Notice of Immigration Pilot Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB-05); U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This collection of information is used by the USCIS to determine participants in the Pilot Immigration Program provided for by section 610 of the Appropriations Act. The USCIS will select regional center(s) that are responsible for promoting economic growth in a geographical area.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 40 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC, 20529; 202-272-8377.

Dated: June 21, 2005.

Richard A. Sloan,

*Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services,*

[FR Doc. 05-14125 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY**U.S. Citizenship and Immigration Services****Agency Information Collection Activities: Extensions of a Currently Approved Information Collection; Comment Request**

ACTION: 30-Day notice of information collection under review; Application for Certificate of Citizenship, Form N-600.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 16, 2005 at 70 FR 25843, allowed a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comments on the revised form. Comments are encouraged and will be accepted until August 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved information collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-600. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided by the USCIS as a uniform format for obtaining essential data necessary to determine the applicant's eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 88,500 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 88,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC, 20529; (202) 272-8377.

Dated: June 21, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05-14126 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY**U.S. Citizenship and Immigration Services****Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request**

ACTION: 30-Day notice of information collection under review: Request for Hearings on a Decision in Naturalization Proceedings under Section 336; Form N-336.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 16, 2005 at 70 FR 25842, allowed for a 60-day public comment period. No comments were

received by the USCIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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 information collection.

(2) *Title of the Form/Collection:* Request for Hearing on a Decision in Naturalization Proceedings under Section 336.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-336. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form will be used by applicants for naturalization to pursue the only venue available to them in the appeal process.

(5) *An estimate of the total number of respondents and the amount of times estimated for an average respondent to respond:* 7,669 responses at 165 minutes (2.75 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 21,090 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument, please contact Richard A.

Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377.

Dated: June 21, 2005.

Richard A. Sloan,

Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.
[FR Doc. 05-14127 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: application by refugee for waiver of ground of excludability; Form I-602.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This information collection was previously published in the **Federal Register** on May 16, 2005 at 70 FR 25843, allowed for a 60-day public comment period. The U.S. Citizenship and Immigration Services (USCIS) did not receive any comments from the public on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until; August 19, 2005. This process is conducted in accordance with 5 CFR part 1320.10.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or

other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application by Refugee for Waiver of Ground of Excludability.

Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form I-602. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by the USCIS to determine eligibility for waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC, 20529; 202-272-8377.

Dated: June 21, 2005.

Richard A. Sloan,

Regulatory Management Division, U.S.
Citizenship and Immigration Services.

[FR Doc. 05-14128 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Supplementary Statement for Graduate Medical Trainees; Form I-644.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information

collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 16, 2005 at 70 FR 25840, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until [August 18, 2005.] This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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:* Supplementary Statement for Graduate Medical Trainees.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-644, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: individuals or Households. This information collection will be used by foreign exchange visitors who are seeking an extension of stay in order to complete a program of graduate education and training.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: 3,000 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 249 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC, 20529; 202-272-8377.

Dated: June 21, 2005.

Richard A. Sloan,

*Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.*

[FR Doc. 05-14129 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Guidelines on Producing Master Exhibits for Asylum Applications, File No. OMB-4.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 16, 2005 at 70 FR 25841, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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 information collection.

(2) *Title of the Form/Collection:* Guidelines for Producing Master Exhibits for Asylum Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB-04), U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-Profit Institutions. Master Exhibits area means by which credible information on country conditions related to asylum applications are made available to Asylum and Immigration Officers for use in adjudicating cases.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20 responses at 80 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,600 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202-272-8377.

Dated: June 21, 2005.

Richard A. Sloan,

*Director, Regulatory Management Division,
U.S. Citizenship and Immigration Services.*

[FR Doc. 05-14130 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Data Relating to Beneficiary of Private Bill; Form G-79A.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 16, 2005 at 70 FR 25839, allowed for a 60-day public comment period. The ICE did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 18, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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 currently approved collection.

(2) *Title of the Form/Collection:* Data Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G-79A. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information is needed to report on Private Bills to Congress when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Immigration and Customs Enforcement, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202-272-8377. The U.S. Citizenship and Immigration Services published this notice on behalf of the U.S. Immigration and Customs Enforcement.

Dated: June 21, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05-14131 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Emergency Federal Law Enforcement Assistance File No. OMB-6.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on May 16, 2005 at 70 FR 25839, allowed for a 60-day public comment period. The ICE did not

receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until [August 18, 2005]. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, 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:* Emergency Law Enforcement Assistance.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB-06), U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local or tribal governments. This collection of information is needed for the States and localities to submit claims for reimbursement in connection with immigration emergencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10 responses at 30 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan,

Director, Regulatory Management Division, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272-8377. The U.S. Citizenship and Immigration Services published this notice on behalf of the U.S. Immigration and Customs Enforcement.

Dated: June 21, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05-14132 Filed 7-18-05; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received on or before August 18, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713-5343.

SUPPLEMENTARY INFORMATION:

Permit Number: TE040881-1.

Applicant: Timothy Carter.

The applicant requests a permit amendment to take the Indiana bat (*Myotis sodalis*) and gray bat (*M. grisescens*) in Georgia. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE106217.

Applicant: The Toledo Zoo, Toledo, Ohio.

The applicant requests a permit to take Mitchell's satyr (*Neonympha mitchelli mitchelli*) throughout Ohio. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE106220.

Applicant: Brianne Everson, Terre Haute, Indiana.

The applicant requests a permit to take the Indiana bat (*Myotis sodalis*) throughout Illinois and Indiana. The scientific research is aimed at

enhancement of survival of the species in the wild.

Permit Number: TE106221.

Applicant: Susan Haig, Corvallis, Oregon.

The applicant requests a permit to take the Least tern (*Sterna antillarum*) throughout its range in the United States. The scientific research is aimed at enhancement of survival of the species in the wild.

Permit Number: TE106224.

Applicant: Ralph Taylor, Barboursville, West Virginia.

The applicant requests a permit to take (collect and hold) all endangered mussel species throughout the Ohio River system in eastern and central United States. The scientific research is aimed at enhancement of survival of the species in the wild.

Dated: June 14, 2005.

Wendi Weber,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 05-14159 Filed 7-18-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Review of Higgins Eye (*Lampsilis higginsii*), Hungerford's Crawling Water Beetle (*Brychius hungerfordi*), Missouri Bladderpod (*Lesquerella filiformis*), and Running Buffalo Clover (*Trifolium stoloniferum*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 5-year review of Higgins eye (*Lampsilis higginsii*), Hungerford's crawling water beetle (*Brychius hungerfordi*), Missouri bladderpod (*Lesquerella filiformis*), and Running buffalo clover (*Trifolium stoloniferum*) under section 4(c)(2)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*). We request any information on the aforementioned species since their original listings in 1976 (41 FR 24064), 1994 (59 FR 10584), 1987 (52 FR 682), and 1987 (52 FR 21480), respectively, that has a bearing on the classification of these species as threatened or endangered.

A 5-year review is a periodic process conducted to ensure that the classification of a listed species is appropriate. A 5-year review is based on the best scientific and commercial data

available at the time of the review. Based on the results of these 5-year reviews, we will make a finding of whether these species are properly classified under section 4(c)(2)(B) of the Act.

DATES: To allow us adequate time to conduct these 5-year reviews, we must receive your information no later than September 19, 2005. If you do not respond to this request for information, but subsequently possess information on the status of any of these species, we are eager to receive new information regarding federally listed species at any time.

ADDRESSES: Submit information to the U.S. Fish and Wildlife Service, Field Supervisor at the following:

1. Higgins eye: Twin Cities Ecological Services Field Office, 4101 East 80th Street, Bloomington, Minnesota 55425-1665.

2. Hungerford's crawling water beetle: East Lansing Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, Michigan 48823-5202.

3. Missouri bladderpod: Columbia Ecological Services Field Office, 101 Park DeVille Drive, Suite A, Columbia, Missouri 65203-0057.

4. Running buffalo clover: Reynoldsburg Ecological Services Field Office, 6950-H Americana Parkway, Reynoldsburg, Ohio 43068-4127.

FOR FURTHER INFORMATION CONTACT:

1. Higgins eye: Ms. Susan Oetker, Twin Cities Ecological Services Field Office (*see ADDRESSES* section); telephone (612) 725-3548, extension 219; facsimile (612) 725-3609.

2. Hungerford's crawling water beetle: Ms. Carrie Tansy, East Lansing Ecological Services Field Office (*see ADDRESSES* section); telephone (517) 351-2555; facsimile (517) 351-1443.

3. Missouri bladderpod: Dr. Paul McKenzie, Columbia Ecological Services Field Office (*see ADDRESSES* section); telephone (573) 234-2132; facsimile (573) 234-2181.

4. Running buffalo clover: Ms. Sarena Selbo, Reynoldsburg Ecological Services Field Office (*see ADDRESSES* section); telephone (614) 469-6923; facsimile (614) 269-6919.

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877-8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: Under the Act, the Service maintains a list of endangered and threatened wildlife and plant species (List) at 50 CFR 17.11 and 17.12. Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every five years. Section 4(c)(2)(B) requires that we

determine: (1) Whether a species no longer meets the definition of threatened or endangered and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. Using the best scientific and commercial data available, a species will be considered for delisting if the data substantiates that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct; (2) the species is considered to be recovered; and/or (3) the original data available when the species was listed, or the interpretation of such data, were in error. Any change in Federal classification requires a separate rulemaking process. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the endangered Higgins eye, endangered Hungerford's crawling water beetle, threatened Missouri bladderpod, and endangered Running buffalo clover.

Public Solicitation of New Information

To ensure that the 5-year reviews are complete and based on the best available scientific and commercial information, we are soliciting new information from the public, concerned governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of Higgins eye, Hungerford's crawling water beetle, Missouri bladderpod, and Running buffalo clover.

A 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Requested information includes (A) species biology, including but not limited to, population trends, distribution, abundance, demographics, and genetics; (B) habitat conditions, including but not limited to, amount, distribution, and suitability; (C) conservation measures that have been implemented that benefit the species; (D) threat status and trends; and (E) other new information, data, or corrections, including but not limited to, taxonomic or nomenclature changes, identification of erroneous information contained in the List, and improved analytical methods.

You may submit your comments and materials to the appropriate Field

Supervisor (see **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. We will not, however, consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Information received in response to this notice and review will be available for public inspection, by appointment, during normal business hours (see **ADDRESSES** section).

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 16, 2005.

Wendi Weber,

Assistant Regional Director, Ecological Services, Region 3.

[FR Doc. 05-14161 Filed 7-18-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Low Effect Habitat Conservation Plan for Northern Indiana Public Service Company and the Indiana-American Water Company, Inc.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Northern Indiana Public Service Company and the Indiana-American Water Company, Inc. (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for a joint incidental take permit for one covered species pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for "take" of the endangered Karner blue butterfly (*Lycaeides melissa samuelis*) from management activities associated with electric power transmission line, natural gas pipeline, and potable water pipeline right-of-ways in northern Lake and Porter Counties, Indiana. A conservation program to mitigate for the project activities would be implemented

as described in the proposed Low Effect Habitat Conservation Plan (proposed Plan), which would be implemented by the Applicants. We are requesting comments on the permit application and on the preliminary determination that the proposed Plan qualifies as a "Low-Effect" Habitat Conservation Plan, eligible for a categorical exclusion under the National Environmental Policy Act (NEPA) of 1969, as amended.

DATES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111-4056, and must be received on or before August 18, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, (612) 713-5343.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Individuals requesting copies of the applications and proposed Plan should contact the Service by telephone at (612) 713-5343 or by letter to the U.S. Fish and Wildlife Office (see **DATES**). Copies of the proposed Plan also are available for public inspection during regular business hours at the U.S. Fish and Wildlife Office located at 1000 West Oakhill Road, Porter, Indiana or at the Service's Regional Web site at: <http://www.fws.gov/midwest/NEPA>.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the take of animal species listed as endangered or threatened. The definition of take under the Act includes the following activities: to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, the Service may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for endangered species are found in the Code of Federal Regulations at 50 CFR 17.22.

The Applicant is seeking a permit for take of the Karner blue butterfly during the 25 years of the permit. The project involves the operation and maintenance of 4 utility corridors encompassing approximately 86 acres, of which 4.2 acres is currently considered habitat for the Karner blue butterfly. Normal maintenance activities that would occur include temporary disturbances

resulting from transmission line maintenance, replacing conductors, gas line construction or replacement, water main maintenance and construction, and vegetation management to control tree growth. All activities will take place within the existing utility right-of-ways and easement. Incidental take will occur within the right-of-ways as a result of temporary disturbance to Karner blue butterfly habitat by truck and heavy equipment traffic, soil disturbances from excavation activities, mowing and hand cutting of brush and woody stems, and application of herbicides. The project site is not known to contain any other rare, threatened, or endangered species or habitat. Critical habitat does not occur for any listed species on the project site.

The Applicant proposes to mitigate the effects to the Karner blue butterfly associated with the covered activities by fully implementing the Plan. The purpose of the proposed Plan's conservation program is to promote the biological conservation of the Karner blue butterfly. The Applicant proposes to mitigate the take by creating an additional 9 acres of habitat by planting wild lupine and other nectar plants.

The Proposed Action consists of the issuance of an incidental take permit and implementation of the proposed Plan, which includes measures to mitigate impacts of the project on the Karner blue butterfly. Two alternatives to the taking of the listed species under the Proposed Action are considered in the proposed Plan. Under the No Action Alternative, no permit would be issued, and no construction would occur. Under the No Change from the historic maintenance plan, no incidental take of the Karner blue butterfly would be authorized, but a reduction in the habitat quality would result since there would be no provision for habitat improvements. By eliminating habitat enhancements of the corridors, the quality and extent of the existing Karner blue butterfly habitat would diminish through normal ecological succession.

The Service has made a preliminary determination that approval of the proposed Plan qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 6, Appendix 1, Section 1.4C(2)) and as a "low-effect" plan as defined by the Habitat Conservation Planning Handbook (November 1996). Determination of Low-effect Habitat Conservation Plans is based on the following three criteria: (1) Implementation of the proposed Plan would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2)

implementation of the proposed Plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the proposed Plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result in cumulative effects to environmental values or resources which would be considered significant.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. We will consider public comments in making the final determination on whether to prepare such additional documentation.

This notice is provided pursuant to section 10(c) of the Act. We will evaluate the permit application, the proposed Plan, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue permits to the Applicants for the incidental take of the Karner blue butterfly from right-of-way management in Lake and Porter Counties, Indiana.

Dated: June 10, 2005.

Robert Krska,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 05-14160 Filed 7-18-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Reconstruction of BIA Route 4 on the Crow Creek Reservation, South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) has reconsidered the Finding of No Significant Impact signed on March 24, 2004, for the proposed reconstruction of BIA Route 4 near Fort Thompson, South Dakota. This notice advises the public that the BIA intends to gather the information necessary to prepare an Environmental Impact Statement (EIS) for the reconstruction project. The purpose of the proposed action is to improve the roadway to modern safety standards. This notice also announces two public scoping meetings to identify potential issues, concerns and alternatives to be considered in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by September 2, 2005. The public scoping meetings will be held August 23 and 25, 2005, from 6 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Marilyn Bercier, 115 4th Avenue SE., Aberdeen, South Dakota 57401.

The August 23, 2005, public scoping meeting will be held in the casino at the Lodestar Casino and Hotel, Fort Thompson, South Dakota. The August 25, 2005, public scoping meeting will be held at the Four Bears Casino and Lodge, New Town, North Dakota.

FOR FURTHER INFORMATION CONTACT: Marilyn Bercier, (605) 226-7645.

SUPPLEMENTARY INFORMATION: The BIA proposes to acquire rights-of-way and provide funding for the reconstruction of BIA Route 4 on the Crow Creek Reservation, as proposed by the Crow Creek Sioux Tribe. From Fort Thompson, South Dakota, BIA Route 4 runs about 8 miles south and east to its intersection with State Highway 50. BIA Route 4 is located in Township 106 & 107 North and Range 71 & 72 West in Buffalo County, South Dakota.

Part of the Lewis and Clark scenic byway system, the highway poses safety risks to members of the Crow Creek Sioux Tribe and the general traveling public. In addition to surface distress and deterioration throughout its length, the existing roadway has numerous other safety deficiencies, including steep side slopes, abrupt vertical and horizontal curvature, a narrow roadway surface, steep in- and back-slopes, protruding pipes, improper sight distances, and roadside obstructions. The BIA proposes that Route 4 be reconstructed to current safety guidelines.

The BIA will serve as the Lead Agency for compliance with the National Environmental Policy Act. The Crow Creek Sioux Tribe, the Advisory Council on Historic Preservation, and the Mandan, Hidatsa and Arikara Nation have been invited to participate as cooperating agencies in the preparation of the EIS.

The EIS will assess the potential effects to the human environment from the reconstruction of Route 4. Areas of concern include socio-economics, transportation, groundwater and surface water, wildlife and their habitats, cultural resources, aesthetics, land uses, health and safety, and threatened, endangered, or special-status species. The list of issues to be addressed may

expand after scoping comments are received.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1-6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: June 16, 2005.

Debbie L. Clark,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05-14116 Filed 7-18-05; 8:45 am]

BILLING CODE 4310-W7-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-933-1430-ET; DK-G04-0003; IDI-7322]

Notice of Proposed Withdrawal Extensions and Public Meetings; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has filed an application proposing to extend Public Land Order Nos. 6629 and 6670 for additional 20-year terms. The Public Land Orders withdrew public lands and

reserved mineral interests from settlement, sale, location, and entry under the general land laws, including the mining laws, to protect the recreational and scenic values of the Lower Salmon River. This notice gives the public an opportunity to comment on the proposed action and gives notice for scheduled public meetings in connection with the proposed withdrawal extensions.

DATES: Public meetings will be held on Tuesday, October 18, 2005 in Lewiston, Idaho at the Community Center located at 1424 Main Street; and Thursday, October 20, 2005 in Riggins, Idaho at the Best Western Salmon Rapids Lodge located at 1010 South Main Street. Both meetings will be held from 7:30 p.m. to 9 p.m.

ADDRESSES: All persons who wish to submit comments in connection with the proposed withdrawal extensions should do so in writing. Comments must be addressed to the Idaho State Director (933), BLM, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, and, to be considered, must be received by BLM on or before November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM, Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208-373-3867 or Ron Grant, BLM, Cottonwood Field Office, House 1, Butte Drive Route 3, Box 181, Cottonwood, Idaho 83522, 208-962-3680.

SUPPLEMENTARY INFORMATION: The withdrawals created by Public Land Order Nos. 6629 (51 FR 41104-41105) and 6670 (53 FR 10535-10536) will expire on November 12, 2006 and March 31, 2008, respectively, unless extended. The Bureau of Land Management has filed an application to extend these withdrawals for additional 20-year terms to protect the remote, undeveloped character and outstanding scenic and recreational values of the Lower Salmon River Canyon. The withdrawals in total comprise approximately 18,531.69 acres of public lands and 8,062.12 acres of reserved mineral interests in private lands located in Lewis and Nez Perce Counties. Complete legal descriptions can be found in the published public land orders and, if requested, copies will be provided by the BLM Idaho State Office or the BLM Cottonwood Field Office at the addresses shown above.

As extended, the withdrawal would not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their

mineral or vegetative resources other than under the mining laws.

The use of a right-of-way, or a cooperative agreement would not provide the needed protection.

There are no suitable alternative sites as the described lands contain the resource values in need of preservation and protection. The withdrawals would not displace any existing uses.

Water rights will not be needed to fulfill the purpose of the requested withdrawal.

All persons who wish to submit comments in connection with the proposed withdrawal extensions may present their views in writing at the public meetings or to the Idaho State Director of the Bureau of Land Management at the address above. To be considered, comments must be received by BLM on or before November 21, 2005. Comments, including names and street addresses of respondents, will be available for public review during regular business hours at the BLM Idaho State Office. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The withdrawal extensions will be processed in accordance with the regulations set forth in 43 CFR 2310.4. (Authority: 43 CFR 2310.3-1(b)(1).

Dated: June 28, 2005.

Jimmie Buxton,

Branch Chief for Lands, Minerals, & Water Rights.

[FR Doc. 05-14185 Filed 7-18-05; 8:45 am]

BILLING CODE 4310-GG-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-960-1420-BJ-TRST] ES-053573, Group No. 164, Minnesota

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat of Survey; Minnesota.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of

survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calendar days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs.

The lands we surveyed are:

Fifth Principal Meridian, Minnesota

T. 144 N., R. 40 W

The plat of survey represents the dependent resurvey of the north boundary, a portion of the south, east and west boundaries, and a portion of the subdivisional lines; and the survey of the subdivision of sections 4, 5, 6, 11, 13, 26 and 36, Township 144 North, Range 40 West, of the Fifth Principal Meridian, Minnesota., and was accepted July 12, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: July 12, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05-14164 Filed 7-18-05; 8:45 am]

BILLING CODE 4310-GJ-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-856 (Review)]

Ammonium Nitrate From Russia

AGENCY: International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the suspended investigation on ammonium nitrate from Russia.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether termination of the suspended investigation on ammonium nitrate from Russia would be likely to lead to

continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 5, 2005.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 5, 2005, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (70 FR 16517, March 31, 2005) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-14136 Filed 7-18-05; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-269 and 270 and 731-TA-311-314, 317, and 379 (Second Review)]

Brass Sheet and Strip From Brazil, Canada, France, Germany, Italy, and Japan

AGENCY: International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the countervailing duty orders on brass sheet and strip from Brazil and France and the antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, and Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the countervailing duty orders on brass sheet and strip from Brazil and France and the antidumping duty orders on brass sheet and strip from Brazil, Canada, France, Germany, Italy, and Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 5, 2005.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 5, 2005, the Commission determined that it should proceed to full reviews in the

subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 16519, March 31, 2005) was adequate, and that the respondent interested party group response with respect to Germany was adequate, but found that the respondent interested party group responses with respect to Brazil, Canada, France, Italy, and Japan were inadequate. However, the Commission determined to conduct full reviews concerning subject imports from Brazil, Canada, France, Italy, and Japan to promote administrative efficiency in light of its decision to conduct a full review with respect to subject imports from Germany. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-14134 Filed 7-18-05; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-825 and 826 (Review)]

Polyester Staple Fiber From Korea and Taiwan

AGENCY: International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on polyester staple fiber from Korea and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on polyester staple fiber from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the reviews will be established and announced at a later date. For further information concerning the conduct of

these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* July 5, 2005.

FOR FURTHER INFORMATION CONTACT:

Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 5, 2005, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission found that the domestic interested party group response to its notice of institution (70 FR 16522, March 31, 2005) was adequate, and that the respondent interested party group response with respect to Korea was adequate, but found that the respondent interested party group response with respect to Taiwan was inadequate. However, the Commission determined to conduct a full review concerning subject imports from Taiwan to promote

administrative efficiency in light of its decision to conduct a full review with respect to subject imports from Korea. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 14, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-14135 Filed 7-18-05; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 12, 2005

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202-693-4129 (this is not a toll-free number) or e-mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs,

Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202-395-7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
 - Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
 - Enhance the quality, utility, and clarity of the information to be collected; and
 - Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
- Agency:* Bureau of Labor Statistics.
Type of Review: Reinstatement, with change, of a previously approved collection.
Title: National Longitudinal Survey of Youth 1979.
OMB Number: 1220-0109.
Type of Response: Reporting.
Affected Public: Individuals or households.
Frequency: Biennially.

Instrument	Total respondents	Annual responses	Average time per response	Estimated total annual burden
NLSY79 Round 22 Pretest	30	30	60 minutes	30 hours
NLSY79 Round 22 Main Survey	7,800	7,800	60 minutes	7,800 hours
Round 22 Validation Interviews	200	200	6 minutes	20 hours
Mother Supplement (Mothers of children under age 15)	¹ 1,730	2,200	20 minutes	733 hours
Child Supplement (Children under age 15)	2,050	2,050	31 minutes	1,059 hours
Child Self-Administered Questionnaire (Children ages 10 to 14)	1,310	1,310	30 minutes	655 hours
Young Adult Survey (Youths ages 15 to 20)	2,500	2,500	45 minutes	1,875 hours
TOTALS	14,110	16,090		12,172 hours

¹ The number of respondents for the Mother Supplement (1,730) is less than the number of responses (2,200) because mothers are asked to provide separate responses for each of the biological children with whom they reside. The total number of responses for the Mother Supplement (2,200) is more than the number for the Child Supplement (2,050) because the number of children completing the Child Supplement is lower. The total number of 14,110 respondents across all the survey instruments is a mutually exclusive count that does not include: (1) The 200 re-interview respondents, who were previously counted among the 7,800 main survey respondents and (2) the 1,310 Child SAQ respondents, who were previously counted among the 2,050 Child Supplement respondents.

Total Annualized capital/startup costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$0.

Description: The information obtained in this survey will be used by the Department of Labor, other government agencies, academic researchers, the

news media, and the general public to understand the employment experiences and life-cycle transitions of men and women born in the years 1957

to 1964 and living in the United States when the survey began in 1979.

Ira L. Mills,

Departmental Clearance Office.

[FR Doc. 05-14106 Filed 7-18-05; 8:45 am]

BILLING CODE 4510-24-P

DEPARTMENT OF LABOR

Employment and Training Administration

Migrant and Seasonal Farmworker (MSFW) Monitoring Report and One-Stop Career Center Complaint/Referral Record: Comments

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 Employment and Training Administration (ETA) is soliciting comments concerning the proposed three year extension of the Services to Migrant and Seasonal Farm Workers Report, ETA Form 5148, and the One-Stop Career Center Complaint/Referral Record, ETA Form 8429 from the current end date of September 30, 2005 to new end date of September 30, 2008.

DATES: Submit comments on or before September 19, 2005.

ADDRESSES: Send comments to: Dennis I. Lieberman, U.S. Department of Labor, Employment and Training Administration, Division of Adults and Dislocated Workers, Office of Workforce Investment, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210 (202-693-3580—not a toll free number), fax: 202-693-3587, and e-mail address: lieberman.dennis@dol.gov.

FOR FURTHER INFORMATION CONTACT: Erik Lang, U.S. Department of Labor, Employment and Training

Administration, Office of Workforce Investment, Division of U.S. Employment Service, Room S-4231, 200 Constitution Avenue, NW., Washington, DC 20210 (202-693-2916—not a toll free number), fax: 202-603-3015, and e-mail address: lang.erik@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Employment and Training Administration regulations at 20 CFR 651, 653 and 658 under the Wagner Peyser Act, as amended by the Workforce Investment Act of 1998, set forth requirements to ensure that Migrant and Seasonal Farmworkers (MSFWs) receive services that are qualitatively equivalent and quantitatively proportionate to the services provided to non-MSFWs. In compliance with 20 CFR 653.109, the Department of Labor established record keeping requirements to allow for the efficient and effective monitoring of State Workforce Agencies' (SWAs) regulatory compliance. The ETA Form 5148, Services to Migrant and Seasonal Farm Workers Report, is used to collect data which are primarily used to monitor and measure the extent and effectiveness of SWA service delivery to MSFWs. The ETA Form 8429, One-Stop Career Center Compliant Referral Record, is used to collect and document complaints filed by MSFWs and non-MSFWs pursuant to the regulatory framework established at 20 CFR 658.400.

II. Desired Focus of Comments

Currently, the ETA is soliciting comments concerning the proposed three-year extension of the Services to Migrant and Seasonal Farm Workers Report, ETA Form 5148, and the One-Stop Career Center Complaint/Referral Record, ETA Form 8429 from the current end date of September 30, 2005 to new end date of September 30, 2008:

- 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 by including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Extension of a currently approved collection.

Agency: Employment and Training Administration.

Title: Migrant and Seasonal Farmworker (MSFW) Monitoring Report and One-Stop Career Center Complaint/Referral Record

OMB Number: 1205-0039.

Affected Public: State.

Type of Response: Mandatory.

Number of Respondents: 52.

Annual Responses: 208.

Breakdown of Burden Hours: (See Below)

Complaint Form 8429.

1. *Recordkeeping:*

Number of record-keepers: 639.

Annual hours per record: 5.

Record-keeper hours: 324

2. *Processing:*

Annual number of forms: 2,142.

Minutes per form: 8.

Processing hours: 286.

5148 Report

1. *Recordkeeping Number of record-keepers:* 639.

Annual hours per record-keeper: 1.12.

Record-keepers hours: 713.

2. *Compilation and Reporting:*

Number of Respondents: 52.

Annual number of reports: 4.

Total number of reports: 208.

Minutes per report: 70.

Record keeping hours: 243.

Estimated Total Burden Hours: 1,566.

Total Burden Cost (operating/maintaining): \$0. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Gay M. Gilbert,

Administrator, Office of Workforce Investment.

[FR Doc. E5-3813 Filed 7-18-05; 8:45 am]

BILLING CODE 4510-30-P

DEPARTMENT OF LABOR**Employment and Training
Administration****Information Regarding the Transfer of
Temporary Program Cases to the
Atlanta and Chicago National
Processing Centers, the Processing
Locations for Foreign Labor
Certification Applications Filed With
State Workforce Agencies and the
Department of Labor, and the Filing of
Applications for Certification Under the
E-3 Worker Visa Program**

AGENCY: Employment and Training
Administration (ETA), Department of
Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) is issuing this notice to clarify the locations where applications may be filed and are being processed, respectively, for the permanent labor certification and major temporary foreign labor certification programs administered by ETA's Division of Foreign Labor Certification; to clarify key procedures within each program that may be impacted by ETA's transition from region-based to center-based review; and to provide initial guidance for employers filing applications for certification under the new E-3 worker visa program for Australian professionals seeking to temporarily work in the United States. Recent reforms in several of these programs, as well as the streamlining and centralization of operations and filing procedures to better serve the needs of stakeholders, have required periodic changes to filing locations. This notice describes and further clarifies current filing requirements for each major program. A chart attached to this notice provides users with a convenient, one-stop reference on program-specific filing requirements. This chart will be updated and published in the **Federal Register** and posted on DOL's Web site.

DATES: *Effective Date:* This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, Room C-4312, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: 202-693-3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: To enhance effectiveness and eliminate undue burden on program users, the Department has reformed its process to

issue permanent labor certifications and continues to review and strengthen its various temporary labor certification programs, primarily those leading to H-1B, H-1B1, H-2B, and H-2A worker visas. The Department's long-term goal is to streamline, automate, and centralize operations and processes that may have been duplicative, lengthy, or unduly burdensome. Ongoing and proposed changes are designed to improve the efficiency and integrity of each program.

The purpose of this notice is threefold. First, the notice seeks to update the filing instructions for applications to the temporary labor certification programs, in light of the Department's plans to transfer the Federal processing responsibility related to H-2A and H-2B program applications, as well as applications requiring special handling, to its National Processing Centers located in Atlanta and Chicago. Accordingly, much of the information below related to these applications is new.

Second, the notice seeks to present—clearly, briefly, and in a single document—basic filing instructions for key labor certification programs, including the permanent program. In the context of significant changes to labor certification operations and activities, the Department believes stakeholders would benefit from summarized, organized guidance that establishes a baseline for filings going forward. In those cases in which guidance is unchanged—notably, for the permanent program—this notice restates the instructions that have been provided in recent guidance but, for clarity, refers back to each of the notices originally published. As an aid, this notice attaches a chart, which the Department will update as needed, for use as a one-stop reference on filing requirements for each of the programs listed below.

Third, the Department seeks to provide initial guidance governing the filing of applications for labor certification under the E-3 worker visa program.

**H-1B and H-1B1 Temporary
Professional Workers**

Application submission: Labor Condition Applications filed under the H-1B program, as well as the H-1B1 program created pursuant to legislation implementing the United States-Chile and United States-Singapore Free Trade Agreements, may be filed electronically, by U.S. Mail, or by facsimile. Employers complete an electronic Labor Condition Application (LCA) through DOL's Foreign Labor Certification LCA Online System at <http://www.lca.doleta.gov>. In

addition, employers nationwide may mail or fax LCAs on ETA Form 9035 to ETA's Backlog Elimination Center in Philadelphia, as follows:

ETA Backlog Elimination Center, P.O. Box 13640, Philadelphia, Pennsylvania 19101; (800) 397-0478 (fax).

Employers wishing to withdraw a Labor Condition Application may do so by contacting the ETA National Office as noted below. In addition, the Department has proposed to require electronic filing of H-1B/H-1B1 applications in most instances. See 70 FR 16774. A printable copy of the ETA Form 9035 is available at <http://atlas.doleta.gov/foreign/preh1BForm.asp>. See 20 CFR part 655 subpart H, 69 FR 69412, and the Department's website, <http://www.doleta.gov/business/gw/guestwkr>, for additional details on H-1B and H-1B1 filing requirements and use of this form.

Seventh-year extensions: Employers are asked to e-mail any and all inquiries regarding seventh-year H-1B extensions to the Backlog Elimination Center where their permanent labor certification case is pending. Inquiries may be submitted to the Philadelphia Backlog Elimination Center at h1b7yr@phi.dflc.us, and to the Dallas Backlog Elimination Center at h1b7yr@dal.dflc.us. Please see <http://atlas.doleta.gov/foreign/times.asp> for a display of the SWA case shipping schedule and respective Center locations.

**H-2B Temporary Nonagricultural
Program**

Application Submission: Employers continue to file an ETA 750, Part A, *Application for Alien Employment Certification* with the State Workforce Agency serving the area of intended employment. State Workforce Agencies will continue their traditional practice of review and recruitment oversight.

Note: State Workforce Agencies (SWAs), effective Monday, July 18, 2005, will send processed H-2B applications to the corresponding National Processing Center instead of an ETA Regional Office or Backlog Elimination Center. In other words, all H-2B applications, once reviewed by the SWA, will be sent to either the Atlanta or Chicago National Processing Center. Current state processing time requirements remain unchanged.

State distribution: Each Center will accept applications corresponding to the areas of intended employment listed below.

Atlanta National Processing Center: Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York,

North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington DC, West Virginia, Puerto Rico, or the Virgin Islands.

U.S. Department of Labor,
Employment and Training
Administration, Atlanta National
Processing Center, Harris Tower, 233
Peachtree Street, NE., Suite 410,
Atlanta, Georgia 30303; Phone: (404)
893-0101; Fax: (404) 893-4642.

Chicago National Processing Center:
Alaska, Arizona, Arkansas, California,
Colorado, Hawaii, Idaho, Illinois,
Indiana, Iowa, Kansas, Louisiana,
Michigan, Minnesota, Missouri,
Montana, Nebraska, Nevada, New
Mexico, North Dakota, Ohio, Oklahoma,
Oregon, South Dakota, Texas, Utah,
Washington, Wisconsin, Wyoming, or
Guam.

U.S. Department of Labor,
Employment and Training
Administration, Chicago National
Processing Center, 844 North Rush
Street, 12th Floor, Chicago, Illinois
60611; Phone: (312) 886-8000; Fax:
(312) 886-1688.

This process does not apply to H-2B applications for boilermakers, entertainers, logging, and professional team sports, which are treated separately below.

Boilermakers and professional team sports: The H-2B filing process for professional team sport applications and emergency applications for boilermakers shall continue unchanged, *i.e.*, employers will continue to submit these applications to ETA's National Office for processing. Questions regarding applications on these job classifications may be addressed to:

Leticia Sierra, Manager, Temporary Programs, U.S. Department of Labor, Employment and Training Administration, Division of Foreign Labor Certification, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210. (202) 693-3010 (this is not a toll-free number).

Entertainers: The Federal review process for H-2B entertainers shall change effective July 18, 2005. Employers will continue to file applications with state Offices Specializing in Entertainment (OSEs) in Austin, New York, and Sacramento. However, rather than forward applications to ETA Regional Offices in New York, Dallas, and San Francisco, these state offices will now send applications to the Chicago Processing Center for a determination, as noted below:

H-2B entertainers previously sent to:	Send to:
New York City Regional Office. Dallas Regional Office. San Francisco Regional Office.	Chicago National Processing Center. Chicago National Processing Center. Chicago National Processing Center.

Applications for the Logging Industry: Employers and/or agents should continue to submit applications to their respective State Workforce Agencies, *i.e.*, Maine, New Hampshire, New York, and Vermont. However, effective July 18, 2005, SWA staff must forward processed applications to the Atlanta National Processing Center rather than to the ETA Boston Regional Office. Processing time requirements remain unchanged.

Previously sent to:	Send to:
Boston Regional Office.	Atlanta National Processing Center.

Inquiries (all H-2B applications):

Employers and/or agents having questions regarding the status of their H-2B application(s) should use the contact information noted for the Atlanta and Chicago National Processing Centers.

H-2A Temporary Agricultural Program

Centralizing H-2A Federal Review: State Workforce Agencies will continue their current responsibilities with respect to the receipt and processing of H-2A applications. These responsibilities include prevailing wage/prevaling practice surveys, recruitment of domestic workers, and housing inspections. Effective August 1, 2005, employers will file original copies of their H-2A applications directly with either the National Processing Centers in Atlanta and Chicago, depending on area of intended employment, and simultaneously file a copy with the appropriate SWA. The SWAs will coordinate all activities regarding the processing of the H-2A applications with the appropriate National Processing Center for their jurisdiction, as noted above.

Specifically, SWAs currently sending H-2A applications to the following ETA offices should send materials bearing on each application—including housing inspection results, prevailing wage surveys, and prevailing practice surveys—as follows:

H-2A applications previously sent to:	Send to:
San Francisco Regional Office. Seattle Regional Office. Denver Regional Office. Dallas Regional Office (Backlog Center). Chicago Regional Office. Boston Regional Office. New York Regional Office. Philadelphia Regional Office (Backlog Center). Atlanta Regional Office.	Chicago National Processing Center Chicago National Processing Center Chicago National Processing Center Chicago National Processing Center Chicago National Processing Center Atlanta National Processing Center Atlanta National Processing Center Atlanta National Processing Center Atlanta National Processing Center

H-2A program fees previously sent to:	Send to:
San Francisco Regional Office. Seattle Regional Office. Denver Regional Office. Dallas Regional Office (Backlog Center). Chicago Regional Office. Boston Regional Office. New York Regional Office. Philadelphia Regional Office (Backlog Center). Atlanta Regional Office.	Chicago National Processing Center Chicago National Processing Center Chicago National Processing Center Chicago National Processing Center Chicago National Processing Center Atlanta National Processing Center Atlanta National Processing Center Atlanta National Processing Center Atlanta National Processing Center

E-3 Professional Workers (Australia)

The Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005, Public Law 109-13, was signed by the President on May 11, 2005. The Act established a new nonimmigrant visa category for Australian professionals seeking to work in the United States. The Act provides for 10,500 new visas per fiscal year for Australian nationals seeking temporary work in "specialty occupations," as defined under the H-1B provisions of the Immigration and Nationality Act (INA).

The statute requires that sponsoring employers file a Labor Condition Application with the Department of Labor. To certify a position for E-3 status, the Department must find—and certify to the Departments of Homeland Security and State—that the employer's attestations meet the requirements of

INA § 212(t)(1), the section governing labor certifications for the H-1B1 program.

The Department is coordinating with other Federal agencies with an interest or potential role in the E-3 program to determine and issue further guidance on the specific parameters of the program and how the program will be administered. In the interim, the Department recommends employers seeking to sponsor workers under the E-3 category:

- Use Form ETA 9035, *Labor Condition Application for H-1B & H-1B1 Nonimmigrants*, to request certification under the E-3 program.
- Print "E-3—Australia—to be processed" at the top of each page of the form. Please print legibly and use blue or black ink.

- File the completed LCA with the Department of Labor's National Office.

Questions regarding E-3 Labor Condition Applications may be addressed to:

Leticia Sierra, Manager, Temporary Programs, U.S. Department of Labor, Employment and Training Administration, Division of Foreign Labor Certification, 200 Constitution Avenue, NW., Room C-4312, Washington, DC 20210; (202) 693-3010 (this is not a toll-free number).

Permanent Labor Certification Program

New regulations, effective March 28, 2005, implement a reengineered permanent labor certification program through the use of a new Program Electronic Review Management (PERM) system. See 69 FR 77326. Employers requesting labor certifications for the permanent employment of aliens under this new regulation must use a new ETA Form 9089, *Application for Permanent Employment Certification*, which they must file directly with DOL either electronically or by U.S. Mail to the appropriate National Processing Center. The Department will not accept applications submitted by facsimile.

Permanent program applications are processed at DOL's National Processing Centers, located in Atlanta and Chicago. The Department opened these centers in December 2004 to review applications filed under the PERM system. The National Processing Centers will also process applications filed under the previous regulation that meet the

refiling requirements of the new program. See 20 CFR 656.17(d).

Electronic applications: For faster processing, the Department encourages employers to file applications using the Permanent Online System at <http://www.plc.doleta.gov>. After employers register and establish an account, they or their representatives (for whom they have established a subaccount) can proceed to complete the application electronically. An application filed electronically will be immediately routed to the National Processing Center responsible for the geographic area serving the area of intended employment.

Mailed applications: Employers electing to file non-electronically must submit applications in accordance with the guidance published previously in the **Federal Register** governing which states correspond to which National Processing Center and restated below. See 70 FR 6734. The PERM application must be mailed to the National Processing Center listed below that covers the state or territory in which the area of intended employment is located, as identified below.

Atlanta National Processing Center: Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, Washington DC, West Virginia, Puerto Rico, or the Virgin Islands

U.S. Department of Labor, Employment and Training Administration, Atlanta National Processing Center, Harris Tower, 233 Peachtree Street, NE., Suite 410, Atlanta, Georgia 30303; Phone: (404) 893-0101. Fax: (404) 893-4642.

Chicago National Processing Center: Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, Wyoming, or Guam

U.S. Department of Labor, Employment and Training Administration, Chicago National Processing Center, 844 North Rush Street, 12th Floor, Chicago, Illinois

60611; Phone: (312) 886-8000; Fax: (312) 353-3352.

Applications submitted under the permanent labor certification regulation in effect prior to March 28, 2005:

Applications for permanent labor certification filed under the regulation in effect until March 28, 2005, are being processed in either one of two Backlog Elimination Centers established by the Department in Dallas and Philadelphia, based upon the state in which the area of intended employment is located. Previously filed applications pending in SWA offices or DOL Regional Offices have been transferred for centralized processing in Dallas and Philadelphia. Please see <http://atlas.doleta.gov/foreign/times.asp> for a display of the SWA case shipping schedule and respective Center locations.

Philadelphia Backlog Elimination Center: Same states as covered by the Atlanta National Processing Center, ETA/DFLC Backlog Elimination Center, U.S. Department of Labor, 1 Belmont Avenue, Suite 200, Bala Cynwyd, Pennsylvania 19004; (484) 270-1500 (phone); (484) 270-1600 (fax).

Dallas Backlog Elimination Center: Same states as covered by the Chicago National Processing Center, ETA/DFLC Backlog Elimination Center, U.S. Department of Labor, 700 North Pearl Street, Suite 400 N, Dallas, Texas 75201; (214) 237-9111 (phone); (214) 237-9135 (fax).

Professional team sports: The DOL ETA National Office will continue to process employer applications for certification of permanent positions in professional team sports.

For all other Foreign Labor Certification Program matters, e.g., PERM Schedule A and Shepherders, etc., please forward questions to the ETA National Office at the address noted above.

For additional information on requirements for filing applications under the PERM program and a listing of Frequently Asked Questions (FAQs) for both PERM and backlogged application processing, please see <http://atlas.doleta.gov/foreign>.

Signed in Washington, DC this 13th day of July, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

BILLING CODE 4510-30-U

Employment and Training Administration
Division of Foreign Labor Certification
Application Processing Locations

Program	Nationwide	National Processing and Backlog Elimination Centers (Western United States)	National Processing and Backlog Elimination Centers (Eastern United States)
Permanent Labor Certification Program: Applications filed under the PERM program (regulation effective March 28, 2005)	Employers use ETA Form 9089 to apply. They may register and file on line at: http://www.plc.doleta.gov	If area of intended employment is in AK, AZ, AR, CA, CO, HI, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, UT, WA, WI, WY, or Guam, applications may be filed by U.S. Mail with: U.S. Department of Labor, Employment and Training Administration, Chicago National Processing Center 844 North Rush Street, 12th Floor Chicago, IL 60611 (312) 886-8000 (phone)	If area of intended employment is in AL, CT, DE, FL, GA, KY, ME, MD, MA, MS, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA, WV, DC, Puerto Rico, or the Virgin Islands, applications may be filed by U.S. Mail with: U.S. Department of Labor, Employment and Training Administration, Atlanta National Processing Center Harris Tower 233 Peachtree Street, NE, Suite 410 Atlanta, GA 30303 (404) 893-0101 (phone)
Permanent Labor Certification Program: Applications filed under the regulation in effect through March 27, 2005	Regulations expired March 27, 2005. No new filings being accepted for this program. State Workforce Agencies (SWAs) will return filings to sender.	Dallas Backlog Elimination Center has responsibility for processing applications filed through March 27, 2005 in the states noted above. Correspondence is addressed to: U.S. Department of Labor, ETA/D FLC Backlog Elimination Center 700 North Pearl Street, Suite 400 N Dallas, TX 75201 (214) 237-9111 (phone)	Philadelphia Backlog Elimination Center has responsibility for processing applications filed through March 27, 2005 in the states noted above. Correspondence is addressed to: U.S. Department of Labor, ETA/D FLC Backlog Elimination Center 1 Belmont Avenue, Suite 200 Bala Cynwyd, PA 19004 (484) 270-1500 (phone)
Permanent Labor Certification Program: Professional Team Sports	ETA's National Office will continue to process employer applications for certification of permanent positions in professional team sports.		
H-1B Labor Condition Applications H-1B1 (Chile and Singapore) Labor Condition Applications	Employers filing under the H-1B or H-1B1 program use ETA Form 9035. Electronic applications may be completed at: http://www.lca.doleta.gov Until publication of a final rule generally mandating electronic filing of		

Program	Nationwide	National Processing and Backlog Elimination Centers (Western United States)	National Processing and Backlog Elimination Centers (Eastern United States)
	H-1B/H-1B1 applications, employers may mail or fax applications to: ETA Application Processing Center P.O. Box 13640 Philadelphia, PA 19101 (800) 397-0478 (fax)		
H-1B: Inquiries regarding seventh-year extensions		Employers with cases pending in the Dallas Backlog Elimination Center are asked to e-mail inquiries to: h1b7yr@dai.dflc.us .	Employers with cases pending in the Philadelphia Backlog Elimination Center are asked to e-mail inquiries to: h1b7yr@phi.dflc.us .
E-3 Professional Workers (Australia)	Employers filing under the E-3 program use Form ETA 9035. Applications must be sent by mail for processing to: Leticia Sierra, Manager, Temporary Programs U.S. Department of Labor ETA/D FLC 200 Constitution Avenue, N.W. Room C-4312 Attn: E-3 Australia Washington, D.C. 20210 (202) 693-3010 Note: Applications must note "E-3 – Australia – to be processed" at top of each page of the form.		
H-2A Labor Certification Applications (through July 31, 2005)	Concurrent filings: Employers simultaneously submit applications (consisting of ETA Forms 750A and 790) to the State Workforce Agency (SWA) serving the area of intended employment and either ETA field offices, National Processing Centers, or Backlog Elimination	Employers in the Chicago area of jurisdiction submit applications simultaneously to the appropriate State Workforce Agency and NPC in Chicago. Employers in the Dallas area of jurisdiction submit applications to the appropriate SWA and the Dallas Backlog	Employers in the Atlanta area of jurisdiction submit applications simultaneously to the appropriate SWA and NPC in Atlanta. Employers in the Philadelphia region submit applications to the appropriate SWA and the Philadelphia Backlog

Program	Nationwide	National Processing and Backlog Elimination Centers (Western United States)	National Processing and Backlog Elimination Centers (Eastern United States)
	Centers, as appropriate. ETA receives the original, while SWA receives a copy. Applications may be filed on line at: http://www.h2a.doleta.gov .	Elimination Center. Employers in San Francisco/Seattle area of jurisdiction submit applications to the appropriate SWA and the San Francisco/Seattle Regional Office.	Elimination Center. Employers in Boston/New York area of jurisdiction submit applications to the appropriate SWA and the Boston/New York Regional Offices.
H-2A Labor Certification Applications (effective August 1, 2005)	Concurrent filings: Employers simultaneously submit applications (consisting of ETA Forms 750A and 790) to the ETA National Processing Center of jurisdiction using the state distribution noted above, with a copy of the application to the SWA serving the area of intended employment. Applications may be filed on-line at: http://www.h2a.doleta.gov	Employers file with the Chicago National Processing Center, with a copy to the appropriate SWA. See state distribution and address noted above. By ETA Regional Office: Chicago NPC will receive H-2A applications and program fees previously sent to ETA Regional Offices in San Francisco, Seattle, Denver, Dallas (Backlog Elimination Center), and Chicago.	Employers file with the Atlanta National Processing Center, with a copy to the appropriate SWA. See state distribution and address noted above. By ETA Regional Office: Atlanta NPC will receive H-2A applications and program fees previously sent to ETA Regional Offices in Boston, New York, Philadelphia (Backlog Elimination Center), and Atlanta.
H-2B Labor Certification Applications (through July 17, 2005)	Consecutive State and Federal reviews: Employers file applications on ETA Form 750A with the SWA serving the area of intended employment. SWAs process and forward materials to ETA Regional Offices, National Processing Centers, or Backlog Elimination Processing Centers, as appropriate.		
H-2B Labor Certification Applications (effective July 18, 2005)	Consecutive State and Federal reviews: Employers file applications on ETA Form 750A with the SWA serving the area of intended employment. SWA processes and forwards materials	Employers continue to file with SWAs. SWAs must forward processed applications to either the Chicago or Atlanta National Processing Center, based upon the State distribution and address noted above.	Employers continue to file with SWAs. SWAs must forward processed applications to either the Atlanta or Chicago National Processing Center, based upon the State distribution and address noted above.

Program	Nationwide	National Processing and Backlog Elimination Centers (Western United States)	National Processing and Backlog Elimination Centers (Eastern United States)
	to appropriate ETA National Processing Center.		
H-2B Professional Team Sports and Emergency Boilermaker Applications	All applications use ETA 750A and are processed in the ETA National Office.	All applications will continue to be processed in the ETA National Office.	All applications will continue to be processed in the ETA National Office.
H-2B Applications in the Entertainment Industry (through July 17, 2005)	Employers file applications on ETA Form 750A with State Offices Specializing in Entertainment (OSEs) serving the areas of intended employment as grouped below. OSE forwards applications for processing by the ETA Regional Office in its region: New York OSE (New York Regional Office): AL, CT, DE, FL, GA, KY, ME, MD, MA, MS, NH, NJ, NY, NC, PA, RI, SC, TN, VA, VT, WV, DC, VI, and Puerto Rico Austin OSE (Dallas Backlog Elimination Center): AR, IA, IL, IN, KS, LA, MI, MN, MO, NE, NM, OH, OK, TX, and WI Sacramento OSE (San Francisco Regional Office): AK, AZ, CA, CO, HI, ID, MT, ND, NV, OR, SD, UT, WA, WY, and Guam		
H-2B Applications for the Entertainment Industry (effective July 18, 2005)	OSEs will receive applications based on the state distribution noted above and forward approved applications to the Chicago National Processing Center.	Effective July 18, 2005, all applications will be processed in the Chicago National Processing Center at the address noted above.	
H-2B Applications for the Logging Industry (through July	Consecutive state and Federal reviews: Employers/agents file		

Program	Nationwide	National Processing and Backlog Elimination Centers (Western United States)	National Processing and Backlog Elimination Centers (Eastern United States)
17, 2005)	applications on ETA Form 750A with SWAs in Maine, New Hampshire, New York, and Vermont. SWA forwards processed applications to ETA Boston Regional Office.		
H-2B Applications for the Logging Industry (effective July 18, 2005)	Consecutive state and Federal reviews: Employers/agents file applications on ETA Form 750A with SWAs in Maine, New Hampshire, New York, and Vermont.		Effective July 18, 2005, SWAs must forward processed applications to the Atlanta National Processing Center.
All other Foreign Labor Certification Program matters, e.g., PERM Schedule A and Sheepherders	Contact ETA's National Office for questions and associated filing procedures.		

[FR Doc. 05-14120 Filed 7-18-05; 8:45 am]

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DEPARTMENT OF LABOR**Employment Standards
Administration; Wage and Hour
Division****Minimum Wages for Federal and
Federally Assisted Construction;
General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from the date of notice in the **Federal**

Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3014, Washington, DC 20210.

**Modification to General Wage
Determination Decisions**

The number of decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Date of publication in the **Federal Register** are in parentheses following the decision being modified.

Volume I

Connecticut

CT20030003 (Jun. 13, 2003)

CT20030004 (Jun. 13, 2003)

Massachusetts

MA20030001 (Jun. 13, 2003)

MA20030003 (Jun. 13, 2003)

MA20030004 (Jun. 13, 2003)

MA20030007 (Jun. 13, 2003)

MA20030018 (Jun. 13, 2003)

Maine

ME20030002 (Jun. 13, 2003)

New Jersey

NJ20030002 (Jun. 13, 2003)

New York

NY20030002 (Jun. 13, 2003)

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 NY20030071 (Jun. 13, 2003)
 NY20030072 (Jun. 13, 2003)
 NY20030074 (Jun. 13, 2003)
 NY20030075 (Jun. 13, 2003)
 NY20030076 (Jun. 13, 2003)
 NY20030077 (Jun. 13, 2003)

Volume II

District of Columbia

DC20030001 (Jun. 13, 2003)

DC20030003 (Jun. 13, 2003)

Maryland

MD20030001 (Jun. 13, 2003)

MD20030006 (Jun. 13, 2003)

MD20030010 (Jun. 13, 2003)

MD20030029 (Jun. 13, 2003)

MD20030034 (Jun. 13, 2003)

MD20030040 (Jun. 13, 2003)

MD20030048 (Jun. 13, 2003)

MD20030056 (Jun. 13, 2003)

MD20030057 (Jun. 13, 2003)

MD20030058 (Jun. 13, 2003)

Virginia

VA20030018 (Jun. 13, 2003)

VA20030025 (Jun. 13, 2003)

VA20030052 (Jun. 13, 2003)

VA20030078 (Jun. 13, 2003)

VA20030079 (Jun. 13, 2003)

VA20030092 (Jun. 13, 2003)

VA20030099 (Jun. 13, 2003)

Volume III

Mississippi

MS20030055 (Jun. 13, 2003)

MS20030056 (Jun. 13, 2003)

Tennessee

TN20030022 (Jun. 13, 2003)

Volume IV

Illinois

IL20030053 (Jun. 13, 2003)
 IL20030055 (Jun. 13, 2003)
 IL20030065 (Jun. 13, 2003)

Indiana

IN20030001 (Jun. 13, 2003)
 IN20030002 (Jun. 13, 2003)
 IN20030003 (Jun. 13, 2003)
 IN20030004 (Jun. 13, 2003)
 IN20030005 (Jun. 13, 2003)
 IN20030006 (Jun. 13, 2003)
 IN20030008 (Jun. 13, 2003)
 IN20030010 (Jun. 13, 2003)
 IN20030011 (Jun. 13, 2003)
 IN20030019 (Jun. 13, 2003)
 IN20030021 (Jun. 13, 2003)

Michigan

MI20030001 (Jun. 13, 2003)
 MI20030002 (Jun. 13, 2003)
 MI20030003 (Jun. 13, 2003)
 MI20030004 (Jun. 13, 2003)
 MI20030005 (Jun. 13, 2003)
 MI20030007 (Jun. 13, 2003)
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 MI20030010 (Jun. 13, 2003)
 MI20030011 (Jun. 13, 2003)
 MI20030012 (Jun. 13, 2003)
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 MI20030015 (Jun. 13, 2003)
 MI20030016 (Jun. 13, 2003)
 MI20030019 (Jun. 13, 2003)
 MI20030020 (Jun. 13, 2003)
 MI20030065 (Jun. 13, 2003)
 MI20030066 (Jun. 13, 2003)
 MI20030099 (Jun. 13, 2003)
 MI20030100 (Jun. 13, 2003)
 MI20030101 (Jun. 13, 2003)
 MI20030105 (Jun. 13, 2003)

Ohio

OH20030001 (Jun. 13, 2003)
 OH20030002 (Jun. 13, 2003)
 OH20030003 (Jun. 13, 2003)
 OH20030004 (Jun. 13, 2003)
 OH20030005 (Jun. 13, 2003)
 OH20030006 (Jun. 13, 2003)
 OH20030008 (Jun. 13, 2003)
 OH20030009 (Jun. 13, 2003)
 OH20030012 (Jun. 13, 2003)
 OH20030013 (Jun. 13, 2003)
 OH20030014 (Jun. 13, 2003)
 OH20030018 (Jun. 13, 2003)
 OH20030020 (Jun. 13, 2003)
 OH20030023 (Jun. 13, 2003)
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 OH20030032 (Jun. 13, 2003)
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 OH20030034 (Jun. 13, 2003)
 OH20030035 (Jun. 13, 2003)
 OH20030036 (Jun. 13, 2003)
 OH20030037 (Jun. 13, 2003)
 OH20030038 (Jun. 13, 2003)

Wisconsin

WI20030011 (Jun. 13, 2003)

Volume V

Iowa

IA20030003 (Jun. 13, 2003)
 IA20030005 (Jun. 13, 2003)
 IA20030006 (Jun. 13, 2003)
 IA20030007 (Jun. 13, 2003)
 IA20030008 (Jun. 13, 2003)
 IA20030009 (Jun. 13, 2003)

IA20030010 (Jun. 13, 2003)
 IA20030013 (Jun. 13, 2003)
 IA20030014 (Jun. 13, 2003)
 IA20030020 (Jun. 13, 2003)
 IA20030028 (Jun. 13, 2003)
 IA20030029 (Jun. 13, 2003)
 IA20030032 (Jun. 13, 2003)
 IA20030038 (Jun. 13, 2003)
 IA20030054 (Jun. 13, 2003)
 IA20030056 (Jun. 13, 2003)
 IA20030059 (Jun. 13, 2003)
 IA20030060 (Jun. 13, 2003)
 IA20030067 (Jun. 13, 2003)

Volume VI

North Dakota

ND20030001 (Jun. 13, 2003)
 ND20030003 (Jun. 13, 2003)
 ND20030004 (Jun. 13, 2003)
 ND20030005 (Jun. 13, 2003)
 ND20030006 (Jun. 13, 2003)
 ND20030007 (Jun. 13, 2003)
 ND20030008 (Jun. 13, 2003)
 ND20030009 (Jun. 13, 2003)
 ND20030010 (Jun. 13, 2003)
 ND20030017 (Jun. 13, 2003)

Volume VII

California

CA20030001 (Jun. 13, 2003)
 CA20030002 (Jun. 13, 2003)
 CA20030004 (Jun. 13, 2003)
 CA20030009 (Jun. 13, 2003)
 CA20030013 (Jun. 13, 2003)
 CA20030019 (Jun. 13, 2003)
 CA20030023 (Jun. 13, 2003)
 CA20030025 (Jun. 13, 2003)
 CA20030027 (Jun. 13, 2003)
 CA20030028 (Jun. 13, 2003)
 CA20030029 (Jun. 13, 2003)
 CA20030030 (Jun. 13, 2003)
 CA20030031 (Jun. 13, 2003)
 CA20030032 (Jun. 13, 2003)
 CA20030033 (Jun. 13, 2003)
 CA20030035 (Jun. 13, 2003)
 CA20030036 (Jun. 13, 2003)
 CA20030037 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at <http://www.access.gpo.gov/davisbacon>. They are also available electronically by subscription to the Davis-Bacon Online Service (<http://davisbacon.fedworld.gov>) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1-800-363-2068. This

subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512-1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 14th day of July, 2005.

Shirley Ebbesen,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 05-14180 Filed 7-18-05; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL MEDIATION BOARD

Submission for OMB Review; Comment Request

AGENCY: National Mediation Board (NMB).

SUMMARY: The Director, Office of Administration, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments within 30 days from the date of this publication.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Office of Administration, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection

contains the following: (1) Type of review requested, e.g. new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Mediation Services and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 14, 2005.

June D. W. King,

Director, Office of Administration, National Mediation Board.

Application for Mediation Services

Type of Review: Extension.

Title: Application for Mediation Services, OMB Number: 3140-0002.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 70 annually.

Burden Hours: 17.50.

Abstract: Section 5, First of the Railway Labor Act, 45 U.S.C., 155, First, provides that both, or either, of the parties to the labor-management dispute may invoke the mediation services of the National Mediation Board. Congress has determined that it is in the nation's best interest to provide for governmental mediation as the primary dispute resolution mechanism to resolve labor-management disputes in the railroad and airline industries. The Railway Labor Act is silent as to how the invocation of mediation is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.1 provides that applications for mediation services be made on printed forms which may be secured from the National Mediation Board. This section of the regulations provides that applications should be submitted in duplicate, show the exact nature of the

dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, date and copy of notice served by the invoking party to the other and date of final conference between the parties. The application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act or by the chief executive of the labor organization, whichever party files the application.

The extension of this form is necessary considering the information provided by the parties is used by the Board to structure a mediation process that will be productive to the parties and result in a settlement without resort to strike or lockout. The Board has been very successful in resolving labor disputes in the railroad and airline industries. Historically, some 97 percent of all NMB mediation cases have been successfully resolved without interruptions to public service. Since 1980, only slightly more than 1 percent of cases have involved a disruption of service. This success ratio would possibly be reduced if the Board was unable to collect the brief information that it does in the application for mediation services.

Requests for copies of the proposed information collection request may be accessed from <http://www.nmb.gov> or should be addressed to Denise Murdock, NMB, 1301 K Street NW., Suite 250 E, Washington, DC 20005 or addressed to the e-mail address murdock@nmb.gov or faxed to 202-692-5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D. W. King at 202-692-5010 or via Internet address king@nmb.gov. Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 05-14146 Filed 7-18-05; 8:45 am]

BILLING CODE 7550-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-271]

Entergy Nuclear Operations, Inc., Vermont Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering

modifying previous approvals, granted pursuant to Title 10 of the Code of Federal Regulations (10 CFR 20.2002 (previously 10 CFR 20.302(a)), for on-site disposal of slightly contaminated material at Vermont Yankee Nuclear Power Station (Vermont Yankee), as requested by Entergy Nuclear Operations, Inc. (the licensee). Vermont Yankee is located in Windham County, Vermont. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would modify the previously-granted approvals for on-site disposal of slightly contaminated material to increase the current approved annual volume limit of 28.3 cubic meters of soil/sand to a new annual volume limit of 150 cubic meters of soil/sand. In addition, the licensee has requested a one-time approval for on-site disposal of the current backlog inventory of approximately 528 cubic meters of soil/sand.

The proposed action is in accordance with the licensee's application dated October 4, 2004, as supplemented on January 17, 2005.

The Need for the Proposed Action

The proposed action is needed to dispose of slightly contaminated soil/sand on-site. Current restrictions on the annual volume of slightly contaminated soil/sand that can be disposed on-site, coupled with several plant facility projects in recent years, have resulted in the accumulation of a backlog of slightly contaminated earthen material that is awaiting disposal by land spreading on previously-approved on-site disposal areas. The current approved annual volume limit of 28.3 cubic meters of soil/sand for disposal was based on licensee estimates of soil and sand collected from road and walkway sweepings inside the Protected Area following each year's winter cleanup (i.e., the current annual limit does not account for future site excavation and construction activities).

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that the proposed action will be bounded by the conditions for the on-site disposals previously reviewed and approved by the NRC. The staff's safety evaluation will be provided as an enclosure to the letter to the licensee approving the proposed action.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off-site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. The licensee will continue to use the designated and approved areas of its property for disposal. Determination of the radiological dose impact of the new material to be disposed has been made based on the same dose assessment models and pathway assumptions used in previously-approved applications for Vermont Yankee. The NRC staff's review of the proposed action concluded that the bounding dose conditions for the previously-approved materials will not be exceeded. The maximum dose from the radionuclides in the material was determined to be less than 1 millirem per year to the maximally exposed individual and less than 5 millirem per year to an inadvertent intruder.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). The environmental impacts of the proposed action and the alternative action are similar. If the proposed action is denied, the licensee may be required to ship the material to an off-site low-level radioactive waste disposal facility. The costs associated with off-site disposal greatly exceed the cost of on-site disposal with no significant benefit to the environment.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for Vermont Yankee.

Agencies and Persons Consulted

On April 25, 2005, the staff consulted with the Vermont State official, William

Sherman, of the Department of Public Service, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 4, 2004, as supplemented by letter dated January 17, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly-available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209 or 301-415-4737, or by e-mail to pdr@nrc.gov.

Dated at Rockville, Maryland, this 12th day of July 2005.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-3833 Filed 7-18-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-3103]

Public Meeting To Discuss the Safety Evaluation Report and Final Environmental Impact Statement for the Proposed National Enrichment Facility in Lea County, NM

AGENCY: United States Nuclear Regulatory Commission.

ACTION: Notice of public meeting in Eunice, New Mexico.

SUMMARY: The Nuclear Regulatory Commission (NRC) will be holding a public meeting in the Eunice Community Center, Eunice, New Mexico, to discuss the Safety Evaluation

Report (SER), NUREG-1827, and Final Environmental Impact Statement (FEIS), NUREG-1790, for Louisiana Energy Services' (LES') proposed National Enrichment Facility (NEF) in Lea County, New Mexico. The SER and FEIS document the NRC staff's findings during the safety and environmental review for the proposed NEF. Both documents are available on the NRC Web site at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/>.

Purpose: This meeting will provide an opportunity to hear a summary of, and to ask questions about, the staff's review of LES' application presented in the SER and FEIS.

Time/Date: The public meeting will be held on August 2, 2005, from 7 p.m. to 9 p.m.

Place: Eunice Community Center, 1115 Avenue I, Eunice, New Mexico.

FOR FURTHER INFORMATION CONTACT:

Timothy C. Johnson, Mail Stop: T-8F42, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-7299, and E-mail: tcj@nrc.gov.

Dated at Rockville, Maryland, this 12 day of July, 2005.

For the Nuclear Regulatory Commission.

James W. Clifford,

Acting Chief, Special Projects Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5-3834 Filed 7-18-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATE: Weeks of July 18, 25, August 1, 8, 15, 22, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 18, 2005

11 a.m.—Affirmation Session (Public Meeting) (Tentative).

a. Private Fuel Storage (Independent Spend Fuel Storage Installation) Docket No. 72-22-ISFSI; unpublished Board order (April 25, 2005) (Tentative).

b. Dominion Nuclear Connecticut, Inc. (Millstone Nuclear Power Station, Units 2 and 3), Docket Nos. 50-336-LR & 50-423-LR

(Tentative).

Week of July 25, 2005—Tentative

Thursday, July 28, 2005:

1:30 p.m.—Discussion of Security Issues (Closed-Ex. 1).

Week of August 1, 2005—Tentative

There are no meetings scheduled for the week of August 1, 2005.

Week of August 8, 2005—Tentative

There are no meetings scheduled for the week of August 8, 2005.

Week of August 15, 2005—Tentative

Tuesday, August 16, 2005:

10 a.m.—Meeting with the

Organization of Agreement States (OAS) and the Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Shawn Smith, (301) 415-2620).

This meeting will be webcast live at Web address—<http://www.nrc.gov>.
1 p.m.—Discussion of Security Issues (Closed-Ex. 1).

Week of August 22, 2005—Tentative

There are no meetings scheduled for the week of August 22, 2005.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: David Gamberoni, (301) 415-1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301-415-7080, TDD: 301-415-2100, or by e-mail at aks@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in

receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: July 14, 2005.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 05-14207 Filed 7-15-05; 10:10 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 24 to July 7, 2005. The last biweekly notice was published on July 5, 2005 (70 FR 38712).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed

determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and

any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor

intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, HearingDocket@nrc.gov; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC,

Attention: Rulemakings and Adjudications Staff at (301) 415-1101, verification number is (301) 415-1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415-3725 or by email to OGCMailCenter@nrc.gov. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)-(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by email to pdr@nrc.gov.

Detroit Edison Company, Docket No. 50-341, Fermi 2, Monroe County, Michigan

Date of amendment request: May 27, 2005.

Description of amendment request: The proposed amendment would revise technical specifications (TS) testing frequency for the surveillance requirement (SR) in TS 3.1.4, "Control Rod Scram Times." Specifically, the proposed change would revise the frequency for SR 3.1.4.2, "Control Rod Scram Time Testing," from "120 days cumulative operation in MODE 1" to "200 days cumulative operation in MODE 1."

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in licensing amendment applications in the **Federal Register** on August 23, 2004 (69 FR 51864). The licensee affirmed the applicability of the model NSHC

determination in its application dated May 27, 2005. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David G. Pettinari, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226-1279.
NRC Section Chief: L. Raghavan.

Dominion Nuclear Connecticut, Inc., Docket No. 50-336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: February 25, 2005.

Description of amendment request: The proposed change would modify the Millstone Power Station, Unit No. 2 Technical Specification (TS) Surveillance Requirement for trisodium

phosphate (TSP) to remove the granularity term and chemical detail. In addition, the proposed change will increase the allowed outage time from 48 to 72 hours. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed [license] amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The TSP stored in containment is designed to buffer the acids expected to be produced after a loss of coolant accident and is credited in the radiological analysis for iodine retention. The type and amount of TSP is not considered to be an initiator of any analyzed accident. The proposed change does not modify any plant equipment and only clarifies language used in a TSP surveillance requirement which does not impact any failure modes that could lead to an accident. Removing the detail for TSP granularity and type from the surveillance and increasing the allowed outage time, does not change the solubility or buffering capability of the TSP. Therefore this change does not impact the consequences of any accident. Based on this discussion, the proposed amendment does not increase the probability or consequence of an accident previously evaluated.

2. Does the proposed [license] amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The TSP chemical in containment is not being modified in any way by this proposed amendment. There is no impact on the capability of the TSP to increase the sump water pH to 7 or greater after a loss of coolant accident. No parameters of the TSP baskets are being modified and no changes are being made to the method in which borated water is delivered to the sump. The proposed changes to remove the terms "granular" and "dodecahydrate," and to increase the allowed outage time do not introduce any new failure modes for the containment sump system. Removing the detail from the surveillance requirement will clarify that the intended parameter to be measured is volume. The proposed amendment does not introduce accident initiators or malfunctions that would cause a new or different kind of accident. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed [license] amendment involve a significant reduction in a margin of safety?

Response: No.

There is no significant reduction in the established margin of safety posed by the proposed change to remove detail from the TSP surveillance requirement and increase the allowed outage time. The TSP in containment provides the necessary pH control following a loss of coolant accident

to assure iodine retention. Consequently iodine concentrations in the containment atmosphere are maintained within the assumptions of the offsite dose calculations. The proposed change does not introduce any new requirements for the TSP chemical used in containment that would impact a margin of safety. The allowed outage time of 72 hours is consistent with other emergency core cooling components which are also required to perform during a loss of coolant accident. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Rope Ferry Road, Waterford, CT 06385.
NRC Section Chief: Darrell J. Roberts.

Entergy Nuclear Operations, Inc., Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant (JAFNPP), Oswego County, New York

Date of amendment request: April 27, 2005

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) related to the safety-related battery systems. The revision is based on TS Task Force (TSTF) Change Traveler TSTF-360, Revision 1, "Direct Current (DC) Electrical Rewrite," and would revise TSs for inoperable battery chargers, provide alternative testing criteria for battery charger testing, and revise TSs for battery cell monitoring. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The DC Sources and Battery Cell Parameters are not initiators of any accident sequence analyzed in JAFNPP's Updated Final Safety Analysis Report (UFSAR). As such, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The initial conditions of the Design Basis Accident (DBA) and transient analyses in JAFNPP's UFSAR assume Engineered Safety Feature (ESF) systems are operable. The DC electrical power distribution system is designed to provide sufficient capacity, capability, redundancy, and reliability to

ensure the availability of necessary power to ESF systems so that the fuel, reactor coolant system, and containment design limits are not exceeded. The operability of the DC electrical power distribution system in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical alteration of the JAFNPP. The temporary charger, when placed in service, will be powered from an emergency bus and have appropriate electrical isolation. Installed equipment is not being operated in a new or different manner. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed changes. The operability of the DC electrical power distribution system in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. These proposed changes will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed changes do not alter assumptions made in the safety analyses. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new administrative TS program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical power distribution system will continue to provide adequate power to safety-related loads in accordance with analyses assumptions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy

Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois, and Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: June 15, 2005.

Description of amendment request: Exelon Generation Company, LLC (EGC), plans to transition to Westinghouse SVEA-96 Optima2 fuel at Dresden Nuclear Power Station (DNPS) and Quad Cities Nuclear Power Station (QCNPS) beginning with the QCNPS Unit 2 refueling outage in March 2006. Specifically, EGC requests approval of revisions to Technical Specifications (TSs) Section 3.1.4, "Control Rod Scram Times," TS Section 4.2.1, "Fuel Assembly," and TS Section 5.6.5, "Core Operating Limits Report (COLR)," to support this transition. The core reload analyses using the new Westinghouse analytical methods for the affected units may result in the need for additional TS changes to support the transition to SVEA-96 Optima2 fuel, such as a change to the safety limit minimum critical power ratio. These changes, if any, will be submitted to the NRC in a separate license amendment request.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change has no effect on any accident initiator or precursor previously evaluated and does not change the manner in which the core is operated. The type of fuel is not a precursor to any accident. The new methodologies for determining core operating limits have been validated to ensure that the output accurately models predicted core behavior, and use of the methodologies will be within the ranges previously approved. The new methodologies being referenced will have all been submitted to the NRC, and have either been approved or are currently under NRC review. Those methodologies that are currently under NRC review are scheduled to receive NRC approval prior to the first use of SVEA-96 Optima2 fuel in a reload core at either DNPS or QCNPS.

There is no change in the consequences of an accident previously evaluated. The proposed change in the administratively

controlled analytical methods does not affect the ability to successfully respond to previously evaluated accidents and does not affect radiological assumptions used in the evaluations. Source term from SVEA-96 Optima2 fuel will be bounded by the source term assumed in the accident analyses. There is no effect on the type or amount of radiation released, and there is no effect on predicted offsite doses in the event of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not affect the performance of any DNPS or QCNPS structure, system, or component credited with mitigating any accident previously evaluated. The use of new analytical methods, which have either been reviewed and approved by the NRC or are currently being reviewed by the NRC, for the design of a core reload will not affect the control parameters governing unit operation or response of plant equipment to transient conditions. The proposed change does not introduce any new modes of system operation or failure mechanisms.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to TS 3.1.4 clarifies that analyses for design basis accidents and transients will continue to support the scram times listed in TS Table 3.1.4-1, independent of whether General Electric analyzes the core. The proposed change does not alter the acceptance criteria for control rod scram times. Future core reloads will be analyzed using the NRC-approved methodology for modeling control rod insertion during a scram. The proposed change to TS Section 4.2.1 revises the description of fuel assemblies to envelope the SVEA-96 Optima2 fuel characteristics. The proposed change to TS Section 5.6.5 adds new analytical methods for design an analysis of core reloads to the list of methods currently used to determine the core operating limits. The NRC has either previously approved the analytical methods being added, or is currently reviewing the methods.

The proposed change does not modify the safety limits or setpoints at which protective actions are initiated, and does not change the requirements governing operation or availability of safety equipment assumed to operate to preserve the margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Y. Suh.

Tennessee Valley Authority (TVA), Docket No. 50-390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: April 4, 2005.

Description of amendment request: In order to support the steam generator replacement project (SGRP), the proposed amendment would temporarily revise the Operating License to allow the licensee to operate with one of the two recently installed 18-inch diameter penetrations through the Shield Building dome to be opened while the unit is in Modes 1-4. Either of the Shield Building penetrations will be allowed to be opened for a combined total of up to 5 hours a day, 6 days a week while in Modes 1-4 during the portion of the ongoing Cycle 7 operation between receipt of NRC approval and Mode 5 at the start of the Cycle 7 refueling outage. The technical specifications will revert to the pre-amendment requirements prior to entering Mode 4 during startup from the Cycle 7 outage, since work activities related to the SGRP will permanently eliminate these penetrations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The bounding transients and accidents (*i.e.*, loss-of-coolant-accident (LOCA), tornado, and earthquake) that are potentially affected by the assumptions associated with the use of one of the Shield Building dome penetrations have been evaluated/analyzed. Weather and seismic related events are determined by regional conditions. Therefore, the probability of a tornado or earthquake is not affected by the use of one of the Shield Building dome penetrations. Failure of the Shield Building or emergency gas treatment system (EGTS) is not an initiator of any of the accidents and transients described in the Updated Final Safety Analysis Report (UFSAR). Therefore, since no initiating event mechanisms are being changed, the use of one of the Shield Building dome penetrations will not result in

an increase in the probability of any previously evaluated accident.

The use of one of the Shield Building dome penetrations affects the integrity of the Shield Building and the ability of the EGTS to maintain the annulus at a negative pressure relative to the outside atmosphere such that the function in mitigating the radiological consequences of an accident is affected. TVA's evaluation documents the radiological consequences of a LOCA assuming the open penetration is closed within fifteen minutes and the mission dose an individual may receive during ingress from the Auxiliary Building roof to the Shield Building dome, closure of the steel hatch assembly, and egress from the Shield Building dome. The LOCA radiological consequences with the penetration open for fifteen minutes are higher than those described in the UFSAR, however, the offsite and Control Room doses remain within the limits of 10 CFR [Title 10, Code of Federal Regulations] 100, Reactor Site Criteria, and 10 CFR 50, Appendix A, General Design Criteria (GDC) 19, Control Room, respectively. The calculated mission doses are also less than the limits of GDC 19. Therefore, since the increase in radiological consequences of the previously evaluated LOCA remains bounded by the applicable regulatory limits, the increased consequences are not considered significant.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Loss of Shield Building integrity or EGTS failure is not an initiator of any of the accidents and transients described in the UFSAR. A loss of Shield Building integrity during Modes 1-4 puts the plant into a Limiting Condition for Operation (LCO) situation and requires that the plant initiate shutdown within a specified timeframe if Shield Building integrity cannot be restored within the specified timeframe. The steel hatch assembly over each Shield Building dome penetration performs the same function as the concrete it replaces. Similar to a failure of the Shield Building, a failure of the steel hatch assembly will not initiate any of the accidents and transients described in the UFSAR. Postulated failures of the steel hatch assembly are degradation/damage to the seal or damage to the hatch hinges. Like any other Shield Building failure, these postulated steel hatch assembly failures result in a loss of Shield Building integrity and require that the failed component be repaired or replaced within a specified timeframe or that plant shutdown be initiated.

Therefore, a failure of a steel hatch assembly during use of the Shield Building dome penetration will not initiate an accident nor create any new failure mechanisms. The changes do not result in any event previously deemed incredible being made credible. The use of the Shield Building dome penetration is not expected to result in more adverse conditions in the annulus and is not expected to result in any increase in the challenges to safety systems.

Manual action is required to close an open Shield Building dome penetration and to configure the EGTS control loops following

the opening and closing of a Shield Building dome penetration such that the EGTS will respond as designed. NRC Information Notice (IN) 97-78, Crediting of Operator Actions in Place of Automatic Actions and Modifications of Operator Actions, Including Response Times, and ANSI/ANS [American Nuclear Standard Institute/American Nuclear Society]-58.8, Time Response Design Criteria for Safety-related Operator Actions, provide guidance for consideration of safety-related operator actions.

The manual actions implemented as a result of this change can be completed within the guidance and criteria provided in IN 97-78 and ANSI/ANS-58.8. Consequently, the manual actions can be credited in the mitigation of events that require Shield Building integrity. With credit for the manual actions to close an open Shield Building dome penetration and configure the EGTS control loops subsequent to an event, the types of accidents currently evaluated in the UFSAR remains the same.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The manual actions to close an open Shield Building dome penetration and to configure the EGTS control loops following the opening and closing of a Shield Building dome penetration ensure that the EGTS will respond as designed. Safety-related instrumentation is available to inform operators that a reactor trip has occurred, and dedicated trained individuals will be positioned to close an open Shield Building dome penetration, should an accident occur. The manual actions meet the criteria for safety-related operator actions contained in NRC IN 97-78 and ANSI/ANS-58.8. The use of manual actions maintains the margin of safety by assuring compliance with acceptance limits reviewed and approved by the NRC. The appropriate acceptance criteria for the various analyses and evaluation have been met; therefore, there has not been a reduction in any margin of safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Michael L. Marshall, Jr.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of consideration of issuance of amendment to facility operating license, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397-4209, (301) 415-4737 or by e-mail to pdr@nrc.gov.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: February 4, 2004.

Brief description of amendments: The amendments revise Technical Specification 3.7.1, "Main Steam Safety

Valves (MSSVs)," to permit operation in Mode 3 with five to eight inoperable MSSVs (two to five operable MSSVs) per steam generator, increase the Completion Time to reduce the variable overpower trip setpoint when one to four MSSVs per steam generator are inoperable, and make associated editorial changes.

Date of issuance: July 7, 2005.

Effective date: July 7, 2005, and shall be implemented within 90 days of the date of issuance.

Amendment Nos.: Unit 1-155, Unit 2-155, Unit 3-155.

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revise the Technical Specifications.

Date of initial notice in Federal

Register: July 6, 2004 (69 FR 40671).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 2005.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 20, 2004.

Brief description of amendments: The amendments correct references in TS 5.6.7 and TS Table 3.3.10-1, and delete reference to hydrogen analyzers in TS 3.8.1, which were removed from the TSs by Amendment Nos. 262 and 239, for Unit Nos. 1 and 2, respectively, on March 2, 2004.

Date of issuance: July 5, 2005.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 274 and 251.

Renewed Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in Federal

Register: January 4, 2005 (70 FR 400).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated July 5, 2005.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Brunswick County, North Carolina

Date of amendment request: May 17, 2005.

Description of amendment request:

The amendments replace the existing requirement of Technical Specification 3.4.5, "RCS [Reactor Coolant System] Leakage Detection Instrumentation," Required Action D.1, to enter Limiting

Condition for Operation (LCO) 3.0.3 if required leakage detection systems are inoperable with the requirement to be in Mode 3 within 12 hours and Mode 4 within 36 hours.

Date of issuance: June 28, 2005.

Effective date: June 28, 2005.

Amendment Nos.: 237 and 265.

Facility Operating License Nos. 50-325 and 50-324: Amendments revise the technical specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (70 FR 34161 dated June 13, 2005). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by August 12, 2005, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated June 28, 2005.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael L. Marshall.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 15, 2004.

Brief description of amendment: This amendment revises Technical Specifications by extending the inspection interval for reactor coolant pump flywheels to 20 years.

Date of issuance: June 21, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 119.

Facility Operating License No. NPF-63: Amendment revises the Technical Specifications

Date of initial notice in Federal

Register: March 1, 2005 (70 FR 9988).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 21, 2005.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket Nos. 50–336 and 50–423, Millstone Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendments: September 8, 2004, as supplemented May 23, 2005.

Brief description of amendments: These amendments delete the Technical Specifications associated with hydrogen recombiners and hydrogen monitors.

Date of issuance: June 29, 2005.

Effective date: As of the date of issuance and shall be implemented by December 31, 2005.

Amendment Nos.: 287 and 224.

Facility Operating License Nos. DPR–65 and NPF–49: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 1, 2005 (70 FR 5238). The May 23, 2005 supplement provided clarifying information that did not change the scope of the proposed amendments as described in the original notice of proposed action published in the **Federal Register**, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 29, 2005.

No significant hazards consideration comments received: No.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: May 21, 2003, as supplemented on July 23, 2003, and March 31, 2005.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) to extend the surveillance test interval for the reactor protection system (RPS) intermediate range monitor (IRM) functional tests from weekly to 31 days. In addition, the amendment adds instrument check and calibration requirements for the RPS IRM—High Flux function.

Date of Issuance: July 7, 2005.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 225.

Facility Operating License No. DPR–28: Amendment revised the TSs.

Date of initial notice in Federal Register: July 8, 2003 (68 FR 40713). The supplements contained clarifying information only, and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated July 7, 2005.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: September 26, 2003, as supplemented December 8, 2004.

Brief description of amendments: These amendments approve modifications to the Fire Protection Program. Specifically, the modifications involve converting the existing automatic carbon dioxide fire suppression systems installed in each of the four emergency diesel generator rooms and the cable spreading room to manual actuation.

Date of issuance: June 24, 2005.

Effective date: As of the date of issuance, to be implemented following completion of fire protection system modifications.

Amendments Nos.: 255 and 258.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments approve modifications to the Fire Protection Program.

Date of initial notice in Federal Register: December 9, 2003 (68 FR 68669). The December 8, 2004, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 24, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: October 29, 2004.

Brief description of amendment: The amendment revises Technical Specification 3.1.8, "Scram Discharge Volume (SDV) Vent and Drain Valves," for the condition of having one or more SDV vent or drain lines with one valve inoperable.

Date of issuance: June 23, 2005.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 259.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 1, 2005 (70 FR 5247).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 23, 2005.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: December 19, 2003, as supplemented February 18, and March 17, 2004.

Brief description of amendment: The amendment conforms the license to reflect the transfer of Operating License No. DPR–43 to Dominion Energy Kewaunee, Inc., as approved by order of the Commission dated June 10, 2004.

Date of issuance: July 5, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 185.

Facility Operating License No. DPR–43: Amendment revised the Operating License.

Date of initial notice in Federal Register: January 20, 2004 (69 FR 2734). The supplements dated February 18, and March 17, 2004, were within the scope of the initial application as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 10, 2004.

R. E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: December 20, 2004.

Brief description of amendment: The amendment revises the sampling and testing requirements in Technical Specification 5.5.12, "Diesel Fuel Oil Testing Program," which verify the acceptability of new diesel fuel oil for use, prior to addition to the storage tanks, and to stored fuel oil.

Date of issuance: July 7, 2005.

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 91.

Renewed Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 12, 2005 (70 FR 19117).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 7, 2005.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: May 27, 2005, as supplemented by letters dated June 7, June 24, and July 1, 2005.

Brief description of amendments: The amendments revise Technical Specification 3.3.7, "DG-Undervoltage Start," by changing Surveillance Requirement 3.3.7.3.a to lower the allowable values for dropout and pickup of the degraded voltage function.

Date of issuance: July 1, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 196 and 187
Facility Operating License Nos. NPF-10 and NPF-15: The amendments revised the Technical Specifications.

Date of initial notice in *Federal Register*: June 14, 2005 (70 FR 34506). The supplemental letters dated June 7, June 24, and July 1, 2005, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 1, 2005.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: May 17, 2005, as supplemented June 13, 2005.

Brief Description of amendments: The amendments revise the Technical Specification Section 3.7, "Plant Systems," and Section 4.0, "Design Features," to establish cask storage area boron concentration limits and to restrict the minimum burnup of spent fuel assemblies associated with spent fuel cask loading operations.

Date of issuance: June 29, 2005.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 169 and 161.

Renewed Facility Operating License Nos. NPF-2 and NPF-8: Amendments revise the Technical Specifications.

Date of initial notice in *Federal Register*: May 25, 2005 (70 FR 30148). The supplement dated June 13, 2005, provided additional information that

clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 29, 2005.

No significant hazards consideration comments received: No. The NRC staff made a final determination that the amendment involves no significant hazards considerations.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: October 26, 2004

Brief description of amendments: The amendments modify TS requirements to adopt the provisions of Industry/TS Task Force (TSTF) change TSTF-359, "Increased Flexibility in Mode Restraints."

Date of issuance: June 24, 2005.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 137 and 116.

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Date of initial notice in *Federal Register*: January 18, 2005 (70 FR 2898).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 24, 2005.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50-259 Browns Ferry Nuclear Plant, Unit 1, Limestone County, Alabama

Date of application for amendment: July 8, 2004, as supplemented on April 15, 2005.

Brief description of amendment: This amendment removes the requirement to maintain an automatic transfer capability for the power supply to the Low Pressure Coolant Injection inboard injection and recirculation pump discharge valves. The amendment also deletes references to Reactor Motor Operator Valve Boards D and E from the Technical Specifications.

Date of issuance: June 20, 2005.

Effective date: The amendment is effective as of the date of issuance.

Amendment No.: 254.

Facility Operating License No. DPR-33: Amendment revised the Technical Specifications.

Date of initial notice in *Federal Register*: November 9, 2004 (69 FR

64990). The April 15, 2005, letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 20, 2005.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 11th day of July 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5-3793 Filed 7-18-05; 8:45 am]

BILLING CODE 7590-01-P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Notice; Board of Directors Meeting

TIME AND DATE: Thursday, July 28, 2005, 10 a.m. (open portion); 10:15 a.m. (closed portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting open to the Public from 10 a.m. to 10:15 a.m. Closed portion will commence at 10:15 a.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Testimonial—Patrick Pizzella
3. Approval of April 28, 2005 Minutes (open portion)

FURTHER MATTERS TO BE CONSIDERED:

(Closed to the Public 10:15 a.m.)

1. Finance Project—Iraq
2. Finance Project—West Bank/Gaza
3. Finance Project—Guatemala
4. Finance Project—Middle East and North Africa
5. Finance Project—Iraq
6. Finance Project—Asia
7. Finance Project—Africa
8. Approval of April 28, 2005 Minutes (closed portion)
9. Pending Major Projects
10. Reports

CONTACT PERSON FOR INFORMATION:

Information on the meeting may be obtained from Connie M. Downs at (202) 336-8438.

Dated: July 14, 2005.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 05-14218 Filed 7-15-05; 10:59 am]

BILLING CODE 3210-01-M

**OFFICE OF PERSONNEL
MANAGEMENT****Proposed Collection; Comment
Request for Review of a Revised
Information Collection: Forms RI 38-
117, RI 38-118 and RI 37-22**

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38-117, Rollover Election, is used to collect information from each payee affected by a change in the tax code (Public Law 102-318) so that OPM can make payment in accordance with the wishes of the payee. RI 38-118, Rollover Information, explains the election. RI 37-22, Special Tax Notice Regarding Rollovers, provides more detailed information.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of the appropriate technological collection techniques or other forms of information technology.

Approximately 1,500 RI 38-117 forms will be completed annually. We estimated it takes approximately 30 minutes to complete the form. The annual burden is 750 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via e-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Programs, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606-0623.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05-14110 Filed 7-18-05; 8:45 am]

BILLING CODE 6325-38-P

**OFFICE OF PERSONNEL
MANAGEMENT****Submission for OMB Review;
Comment Request for Review of a
Revised Information Collection;
Standard Forms 2800 and 2800A**

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2800, Application for Death Benefits Under the Civil Service Retirement System (CSRS), is needed to collect information so that OPM can pay death benefits to the survivors of Federal employees and annuitants. SF 2800A, Documentation and Elections in Support of Application for Death Benefits When Deceased Was an Employee at the Time of Death, is needed for deaths in service only so that survivors can make the needed elections regarding military service.

Approximately 68,000 SF 2800's are processed annually. The form requires approximately 45 minutes to complete. An annual burden of 51,000 hours is estimated. Approximately 6,800 applicants will use SF 2800A annually. This form also requires approximately 45 minutes to complete. An annual burden of 5,100 hours is estimated. The total burden is 56,100 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or via e-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415, and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New

Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Cyrus S. Benson, Team Leader, Publications Team/RIS Support Services, (202) 606-0623.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05-14111 Filed 7-18-05; 8:45 am]

BILLING CODE 6325-38-P

**OFFICE OF PERSONNEL
MANAGEMENT****Comment Request for Review of an
Expiring Information Collection: OPM
Form 1647**

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of an expiring information collection. OPM Form 1647, Combined Federal Campaign Eligibility Application, is used to review the eligibility of national, international, and local charitable organizations that wish to participate in the Combined Federal Campaign.

We estimate 2,000 Form 1647's will be completed annually. Each form takes approximately three hours to complete. The annual estimated burden is 6,000 hours.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, 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; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the appropriate use of technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, FAX (202) 418-3251 or e-mail to mbtoomey@opm.gov. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Curtis Rumbaugh, CFC Operations Manager, Office of CFC Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5450, Washington, DC 20415.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

[FR Doc. 05–14112 Filed 7–18–05; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Currently Approved Information Collection: RI 38–107

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a currently approved information collection. RI 38–107, Verification of Who is Getting Payments, is used to verify that the entitled person is indeed receiving the monies payable. Failure to collect this information would cause OPM to pay monies absent the assurance of the correct payee.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, 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; 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 techniques or other forms of information technology.

Approximately 25,400 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 4,234 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Retirement Services Programs, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415.

*For Information Regarding
Administrative Coordination Contact:*
Cyrus S. Benson, Team Leader,
Publications Team, RIS Support
Services/Support Group, (202) 606–
0623.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

[FR Doc. 05–14113 Filed 7–18–05; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 20– 80

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 20–80, Alternative Annuity Election, is used for individuals who are eligible to elect whether to receive a reduced annuity and a lump-sum payment equal to their retirement contributions (alternative form of annuity) or an unreduced annuity and no lump sum.

Approximately 200 annuitants and survivors request reconsideration annually. We estimate it takes approximately 20 minutes to apply. The annual burden is 67 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to mbtoomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela Israel, Chief, Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415; and Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and

Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

*For Information Regarding
Administrative Coordination Contact:*
Cyrus S. Benson, Team Leader,
Publications Team, Administrative
Services Branch, (202) 606–0623.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

[FR Doc. 05–14114 Filed 7–18–05; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52011; File No. SR–CBOE–
2004–63]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto To List and Trade Short Term Option Series

July 12, 2005.

I. Introduction

On October 12, 2004, the Chicago Board Options Exchange, Incorporated (“CBOE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder, ² a proposed rule change to initiate a one-year pilot program that would allow the Exchange to list and trade option series that expire one week after being opened (“Short Term Option Series”). The Exchange filed Amendment No. 1 with the Commission on January 21, 2005. ³ The amended proposal was published for comment in the **Federal Register** on February 16, 2005. ⁴ The Commission received one comment letter regarding the proposal. ⁵ The Exchange filed Amendment No. 2 with the Commission on April 26, 2005. ⁶ This notice and order requests

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 See Securities Exchange Act Release No. 51172 (February 9, 2005), 70 FR 7979.

⁵ See letter from Michael J. Ryan, Executive Vice President and General Counsel, American Stock Exchange, to Jonathan G. Katz, Secretary, Commission, dated March 10, 2005 (“Amex Letter”).

⁶ Amendment No. 2 replaced the original filing and Amendment No. 1 in their entirety.

Amendment No. 2 proposes that Short Term Option

comment on Amendment No. 2 and approves the proposal, as amended, on an accelerated basis.

II. Description of Proposed Rule

CBOE proposes to amend its rules 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 classes⁷ on which Short Term Option Series could be opened. A series could be opened on any Friday that is a business day and would expire at the close of business on the next Friday that is a business day. 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.

Under the pilot program, the Exchange also could list and trade Short Term Option Series on any option class that is selected by another exchange that employs a similar pilot program. Limiting the number of such option classes would ensure that the addition of new series through the pilot program would have only a negligible impact on the Exchange's and the Options Price Reporting Authority's ("OPRA") 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. 2, CBOE revised the proposal so that a Short Term Option Series would be settled in the same manner as the monthly expiration series in the same class. If the monthly option contract for a particular class were A.M.-settled, as most index options are,⁸ the Short Term Option Series for that class also would be A.M.-settled; if the monthly option contract for a particular class were P.M.-settled, as most non-index options are, the Short Term Option Series for that

class also would be P.M.-settled. Similarly, Short Term Option Series for a particular class would be physically settled or cash-settled in the same manner as the monthly option contract in that class. The Exchange usually would open five Short Term Option Series for each expiration date in that class. The strike price of each Short Term Option Series would be fixed at a price per share, with at least two strike prices above and two strike prices below the value of the underlying stock or calculated index value at about the time that the Short Term Option Series is opened. CBOE would not open a Short Term Option Series in the same week that the corresponding monthly option series is expiring, because the monthly option series in its last week before expiration is functionally equivalent to the Short Term Option Series. The interval between strike prices on Short Term Option Series would be the same as with the corresponding monthly option series. CBOE would aggregate a Short Term Option Series with its corresponding monthly option series for purposes of the Exchange's rules on position limits.

The Exchange represented that it has the system capacity to adequately handle the new option series contemplated by this proposal. The Exchange provided to the Commission information in a confidential submission to support that representation.

CBOE proposed that the pilot program extend one year from the date of this approval.

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.⁹ In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,¹⁰ 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 CBOE's proposal, will further the public interest by offering 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 CBOE 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, OPRA's, and vendors' systems.

The Commission received one comment letter on the proposed rule change.¹¹ The commenter questioned the appropriateness of P.M. settlement for Short Term Option Series on indexes, given the Commission's historical concern that P.M.-settled index options have the potential to increase volatility in the underlying equity market.

The Commission shares the commenter's concern. In Amendment No. 2, CBOE revised its proposal so that all Short Term Option Series will be settled in the same manner as the corresponding monthly expiration series in the same class. Consequently, the majority of Short Term Option Series on indexes will be A.M.-settled, as are the majority of regular index options. The Commission believes that this amendment adequately addresses any concerns regarding settlement time.

Pursuant to Section 19(b)(2) of the Act,¹² the Commission finds good cause for approving the amended proposal prior to the thirtieth day after the publication of Amendment No. 2 in the **Federal Register**. Amendment No. 2 proposes that Short Term Option Series listed on currently approved option classes will settle in the same manner (*i.e.*, with respect to A.M. or P.M. settlement and cash or physical settlement) as do their corresponding monthly expiration series in the same option class. The Commission finds good cause to accelerate approval of the amended proposal because CBOE's approach to settlement times for the new Short Term Option Series is consistent with prior Commission guidance regarding options settlement times generally.

IV. Solicitation of Comments Concerning Amendment No. 2

Interested persons are invited to submit written data, views, and

Series listed on currently approved option classes would settle in the same manner (*i.e.*, with respect to A.M. or P.M. settlement and cash or physical settlement) as do the monthly expiration series in the same option class.

⁷ A Short Term Option Series could be opened in any option class that satisfied the applicable listing criteria under CBOE rules (*i.e.*, stock options, options on exchange-traded funds as defined under Interpretation and Policy .06 to CBOE Rule 5.3, or options on indexes).

⁸ The Exchange notes, however, that certain monthly expiration index options—specifically, American- and European-style options on the S&P 100 Index (OEX and XEO, respectively)—are P.M.-settled. Therefore, the Short Term Option Series in these index options would also be P.M.-settled.

⁹ 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).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Amex Letter, *supra* note 5.

¹² 15 U.S.C. 78s(b)(2).

arguments concerning Amendment No. 2, including whether it 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-CBOE-2004-63 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-CBOE-2004-63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the 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-CBOE-2004-63 and should be submitted on or before August 9, 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,¹³ that the proposed rule change (File No. SR-

CBOE-2004-63), as amended, is approved, and that Amendment No. 2 thereto is approved on an accelerated basis, as a pilot program, through July 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson

Assistant Secretary

[FR Doc. E5-3812 Filed 7-18-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52017; File No. SR-CBOE-2005-46]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Establishment of PAR Officials

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 June 10, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 1, 2005, CBOE submitted Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to Designated Primary Market Makers ("DPMs"). The text of the proposed rule change, as amended, is below. Proposed new language is in italics; deletions are in brackets.

* * * * *

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 replaced the original rule filing in its entirety. In Amendment No. 1, CBOE added amendments to certain Exchange Rules relating to the operation of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") to accommodate the implementation of the proposed PAR Official Rules and other proposed rule changes described herein.

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.7. Exchange Liability

(a)-(c) No Change.

* * * Interpretations and Policies:

.01 Rule 7.11 governs the liability of the Exchange for claims arising out of errors or omissions of an Order Book Official or his/her assistants or clerks or a PAR Official or his/her assistants or clerks.

.02-.04 No Change.

* * * * *

Rule 6.8. RAES Operations

No Change.

* * * Interpretations and Policies:

.01 No Change.

.02 (a) No Change.

(b) In respect of those classes of options that have been specifically designated by the appropriate Floor Procedure Committee as coming within the scope of this sentence ("automatic step-up classes"), under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by no more than the "step-up amount" as defined below, such orders will be automatically executed on RAES at the current best bid or offer in the other market.

(i) In respect of automatic step-up classes of options under circumstances where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by more than the step-up amount, or

(ii) In respect of series of option classes designated by the appropriate Floor Procedure Committee or its Chairman under circumstances where the NBBO for one of the series is crossed (e.g., 6.10 bid, 6 asked) or locked (e.g., 6 bid, 6 asked), or

(iii) In respect of specified automatic step-up classes or series of options or specified markets under circumstances where the Chairman of the appropriate Floor Procedure Committee or his designee has determined that automatic step-up should not apply because quotes in such options or markets are deemed not to be reliable, or

(iv) In respect of classes of equity options other than automatic step-up classes where the Exchange's best bid or offer is inferior to the current best bid or offer in another market by any amount, such orders will be rerouted for non-automated handling to [the DPM or OBO] a PAR workstation in the trading crowd for that class of options, or to any other location in the event of system problems or contrary routing instructions from the firm that

¹³ *Id.*

forwarded the order to RAES. If the order has been rerouted to the [DPM or OBO] *PAR workstation in the trading crowd*, the [DPM or] OBO, or *PAR Official* will report the execution or non-execution of such orders to the firm that originally forwarded the order to RAES. With respect to the orders that are rerouted for manual handling pursuant to (ii) above, the appropriate Floor Procedure Committee may determine to have the orders for a particular series within a designated class of options executed on RAES notwithstanding the fact that the NBBO is either crossed or locked. Also, with respect to (ii) above, the appropriate Floor Procedure Committee may determine to have the orders rerouted for manual handling only when the CBOE RAES becomes crossed or locked as a result of applying the step-up amount.

As used in this Interpretation and Policy .02, the "step-up amount" shall be expressed in an amount consistent with the minimum trading increment for options of that series established pursuant to Rule 6.42. The appropriate Floor Procedure Committee shall determine the step-up amount in respect of specified automatic step-up classes or series of options and may vary the "step-up amount" on the basis of order size parameters. The procedures described in this Interpretation .02 shall not apply in circumstances where a "fast market" in the options that are the subject of the orders in question has been declared on the Exchange or where comparable conditions exist in the other market such that firm quote requirements do not apply.

* * * * *

Rule 6.13. CBOE Hybrid System's Automatic Execution Feature

(a) No Change.

(b) Automatic Execution.

(i)–(iii) No Change.

(iv) Executions at NBBO: Eligible orders in classes that are multiply traded will not be automatically executed on CBOE at prices that are inferior to the NBBO and instead shall route to a [DPM's] *PAR [terminal] workstation in the trading crowd* or, at the order entry firm's discretion, to BART. Eligible orders received while the CBOE market is locked (e.g., \$1.00 bid–\$1.00 offered) shall be eligible for automatic execution at CBOE's disseminated quote, provided that the disseminated quote is not inferior to the NBBO.

(c)–(e) No Change.

* * * * *

Rule 6.20. Admission to and Conduct on the Trading Floor; Member Education

(a) Admission to Trading Floor. Unless otherwise provided in the Rules, no one but a member, [or] an Order Book Official designated by the Exchange pursuant to Rule 7.3, or *PAR Official designated by the Exchange pursuant to Rule 7.12* shall make any transaction on the floor of the Exchange. Admission to the floor shall be limited to members, employees of the Exchange, clerks employed by members and registered with the Exchange, service personnel and Exchange visitors authorized admission to the floor pursuant to Exchange policy, and such other persons permitted admission to the floor by the President of the Exchange.

(b)–(e) No Change.

* * * Interpretations and Policies:

.01 No Changes.

.02 Order Book Officials *and PAR Officials* may effect transactions on the floor only in the classes of option contracts to which they have been assigned and only in their capacity as Order Book Officials or *PAR Officials*.

.03–.10 No Change.

* * * * *

Rule 6.80. Definitions

(1)–(11) No Change.

(12) "Linkage Order" means an Immediate or Cancel order routed through the Linkage as permitted under the Plan. There are three types of Linkage Orders:

(i) "Principal Acting as Agent ('P/A') Order," which is an order for the principal account of a Market-Maker (or equivalent entity on another Participant Exchange that is authorized to represent Customer orders) reflecting the terms of a related unexecuted Customer order [for which the Market-Maker is acting as agent];

(ii)–(iii) No Change.

(13)–(21) No Change.

* * * * *

Rule 6.81. Operation of the Linkage

By subscribing to the Plan, the Exchange has agreed to comply with, and enforce compliance by its members with, the Plan. In this regard, the following shall apply:

(a)–(d) No Change.

(e) Receipt of Orders. The Exchange will provide for the execution of P/A Orders and Principal Orders if its disseminated quotation is (i) equal to or better than the Reference Price, and (ii) equal to the then-current NBBO. Subject to paragraph (c) above, if the size of a P/A Order or Principal Order is not

larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, the Exchange will provide for the execution of the entire order, and shall execute such order in its automatic execution system if that system is available. If the size of a P/A Order or Principal Order is larger than the Firm Customer Quote Size or Firm Principal Quote Size, respectively, or if the linkage order received is not eligible to be executed automatically, the Market-Maker or the Exchange must address the order within 15 seconds to provide an execution for at least the Firm Customer Quote Size or Firm Principal Quote Size, respectively. If the order is not executed in full, the Exchange will move its disseminated quotation to a price inferior to the Reference Price.

* * * * *

Rule 6.83. Order Protection

(a) Avoidance and Satisfaction of Trade-Throughs.

(1) General Provisions. Absent reasonable justification and during normal market conditions, members *and the Exchange* should not effect Trade-Throughs. Except as provided in paragraph (b) below, if a member or the Exchange effects a Trade-Through with respect to the bid or offer of a Participant Exchange in an Eligible Option Class and the Exchange receives a complaint thereof from an Aggrieved Party, either:

(i) the [member] *party* who initiated the Trade-Through shall satisfy, or cause to be satisfied, through the Linkage the Aggrieved Party in accordance with subparagraph (a)(2) below; or

(ii) if the member or the Exchange elects not to do so (and, in the case of Third Participating Market Center Trade-Through, the member or the Exchange obtains the agreement of the contra party that received the Linkage Order that caused the Trade-Through), then the price of the transaction that constituted the Trade-Through shall be corrected to a price at which a Trade-Through would not have occurred. If the price of the transaction is corrected, the [Member] *party* correcting the price shall report the corrected price to OPRA, notify the Aggrieved Party of the correction and cancel the Satisfaction Order.

(2) Price and Size. The price and size at which a Satisfaction Order shall be filled is as follows:

(i) Price. A Satisfaction Order shall be filled at the Reference Price. However, if the Reference Price is the price of an apparent Block Trade that caused the Trade-Through, and such trade was not, in fact, a Block Trade, then the Member

or the Exchange may cancel the Satisfaction Order. In that case, the Member or the Exchange shall inform the Aggrieved Party within three minutes of receipt of the Satisfaction Order of the reason for the cancellation. Within three minutes of receipt of such cancellation, the Aggrieved Party may resend the Satisfaction Order with a Reference Price of the bid or offer that was traded through.

(ii) Size. An Aggrieved Party may send a Satisfaction Order up to the lesser of the size of the Verifiable Number of Customer Contracts that were included in the disseminated bid or offer that was traded through and the size of the transaction that caused the Trade-Through. Subject to subparagraph (2)(i) above and paragraph (b) below, a Member or the Exchange shall fill in full all Satisfaction Orders it receives following a Trade-Through, subject to the following limitations:

(A) If the transaction that caused the Trade-Through was for a size larger than the Firm Customer Quote Size with respect to any of the Participant Exchange(s) traded through, the total number of contracts to be filled, with respect to all Satisfaction Orders received in connection with any one transaction that caused a Trade-Through, shall not exceed the size of the transaction. In that case, the Member or the Exchange shall fill the Satisfaction Orders pro rata based on the Verifiable Number of Customer Contracts traded through on each Participant Exchange, and shall cancel the remainder of such Satisfaction Order(s); and

(B) No Change.

(3) Change in Status of Underlying Customer Order. During the time period that a Satisfaction Order is pending at another Participant Exchange, a Member or the Exchange shall cancel such Satisfaction Order as soon as practical if (1) the order(s) for the customer contracts underlying the Satisfaction Order are filled; or (2) the customer order(s) to buy (sell) the contracts underlying the Satisfaction Order are canceled (either being a "change in status of the underlying customer order(s)"). Notwithstanding this obligation to cancel the Satisfaction Order, within 30 seconds of receipt of notification that a Participant Exchange has filled a Satisfaction Order, the Participant that sent the Satisfaction Order may reject such fill if there has been a change in status of the underlying customer order(s), provided that the status change of the customer order occurred prior to the receipt of the Satisfaction Order fill report. However, if the underlying customer order(s) has been executed against the sender of the

Satisfaction Order, the Satisfaction Order fill report may not be rejected.

(4) Protection of Customers.

Whenever subparagraph (a)(1) applies, if Public Customer orders (or P/A Orders representing Public Customer orders) constituted either or both sides of the transaction involved in the Trade-Through, each such Public Customer order (or P/A Order) shall receive:

(i) The price that caused the Trade-Through; or

(ii) The price at which the bid or offer traded through was satisfied, if it was satisfied pursuant to subparagraph (a)(1)(i), or the adjusted price, if there was an adjustment, pursuant to subparagraph (a)(1)(ii), whichever price is most beneficial to the Public Customer order. Resulting differences in prices shall be the responsibility of the [Member] party who initiated the Trade-Through.

(b) Exceptions to Trade-Through Liability. The provisions of paragraph (a) pertaining to the satisfaction of Trade-Throughs shall not apply under the following circumstances:

(1) The [Member] party who initiated the Trade-Through made every reasonable effort to avoid the Trade-Through, but was unable to do so because of a systems/equipment failure or malfunction;

(2) the Member or the Exchange trades through the market of a Participant Exchange to which [such] the Member or the Exchange had sent a P/A Order or Principal Order, and within 20 seconds of sending such order the receiving Participant Exchange had neither executed the order in full nor adjusted the quotation traded through to a price inferior to the Reference Price of the P/A Order or Principal Order;

(3) No Change.

(4) the Trade-Through was other than a Third Participating Market Center Trade-Through and occurred during a period when, with respect to the Eligible Option Class, the Exchange's quotes were Non-Firm; provided, however, that, unless one of the other conditions of this paragraph (b) applies, during any such period: (i) [Members] all parties shall make every reasonable effort to avoid trading through the firm quotes of another Participant Exchange; and (ii) it shall not be considered an exception to paragraph (a) if a Member or the Exchange regularly trades through the firm quotes of another Participant Exchange during such period;

(5)–(8) No Change.

(9) in the case of a Third Participating Market Center Trade-Through, a Satisfaction Order with respect to the Trade-Through was not received by the

Exchange promptly following the Trade-Through. In applying this provision, the Aggrieved Party must send the Exchange a Satisfaction Order within three minutes from the time the report of the transaction that constituted the Trade-Through was disseminated over OPRA. To avoid liability for the Trade-Through, the [Member] party receiving such Satisfaction Order must cancel the Satisfaction Order and inform the Aggrieved Party of the identity of the Participant Exchange that initiated the Trade-Through within three minutes of the receipt of such Satisfaction Order (within one minute in the final five minutes of trading). The Aggrieved Party then must send the Participant Exchange that initiated the Trade-Through a Satisfaction Order within three minutes of receipt of the cancellation of the initial Satisfaction Order (within one minute in the final five minutes of trading).

(c) Responsibilities and Rights Following Receipt of Satisfaction Orders.

(1) When a Member or the Exchange receives a Satisfaction Order, that Member or the Exchange shall respond as promptly as practicable pursuant to Exchange procedures by either:

(i) specifying that one of the exceptions to Trade-Through liability specified in paragraph (b) above is applicable and identifying that particular exception; or

(ii) taking the appropriate corrective action pursuant to paragraph (a) above.

(2) If the [Member] party who initiated the Trade-Through fails to respond to a Satisfaction Order or otherwise fails to take the corrective action required under paragraph (a) within three minutes of receiving notice of a Satisfaction Order, and the Exchange determines that:

(i) There was a Trade-Through; and

(ii) none of the exceptions to Trade-Through liability specified in paragraph (b) above were applicable; then, subject to the next paragraph, the [Member] party who initiated the Trade-Through shall be liable to the Aggrieved Party for the amount of the actual loss resulting from non-compliance with paragraph (a) and caused by the Trade-Through.

If either (a) the Aggrieved Party does not establish the actual loss within 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, within four minutes from the time the Aggrieved Party sent the Satisfaction Order) or (b) the Aggrieved Party does not notify the Exchange Participant that initiated the Trade-Through of the amount of such loss within one minute

of establishing the loss, then the liability shall be the lesser of the actual loss or the loss caused by the Trade-Through that the Aggrieved Party would have suffered had that party purchased or sold the option series subject to the Trade-Through at the "mitigation price."

The "mitigation price" is the highest reported bid (in the case where an offer was traded through) or the lowest reported offer (in the case where a bid was traded through), in the series in question 30 seconds from the time the Aggrieved Party received the response to its Satisfaction Order (or, in the event that it did not receive a response, four minutes from the time the Aggrieved Party sent the Satisfaction Order). If the Participant Exchange receives a Satisfaction Order within the final four minutes of trading (on any day except the last day of trading prior to the expiration of the series which is the subject of the Trade-Through), then the "mitigation price" shall be the price established at the opening of trading in that series on the Aggrieved Party's Participant Exchange on the next trading day. However, if the price of the opening transaction is below the opening bid or above the opening offer as established during the opening rotation, then the "mitigation price" shall be the opening bid (in the case where an offer was traded through) or opening offer (in the case where a bid was traded through). If the Trade-Through involves a series that expires on the day following the day of the Trade-Through and the Satisfaction Order is received within the four minutes of trading, the "mitigation price" shall be the final bid (in the case where an offer was traded through) or offer (in the case where a bid was traded through) on the day of the trade that resulted in the Trade-Through.

(3) A Member that is an Aggrieved Party under the rules of another Participant Exchange governing Trade-Through liability (*or the Exchange*) must take steps to establish and mitigate any loss such Member (*or the Exchange*) might incur as a result of the Trade-Through of the Member's bid or offer (*or an order on the Exchange's limit order book*). In addition, the Member (*or the Exchange*) shall give prompt notice to the other Participant Exchange of any such action in accordance with subparagraph (c)(2) above.

(d) Limitations on Trade-Throughs. *The Exchange and* [M]embers may not engage in a pattern or practice of trading through better prices available on other exchanges, whether or not the exchange or exchanges whose quotations are traded through are Participant

Exchanges, unless one or more of the provisions of paragraph (b) above are applicable. In applying this provision:

(1) The Exchange will consider there to have been a Trade-Through if a [Member executes a] trade *is executed* at a price inferior to the NBBO even if the Exchange does not receive a Satisfaction Order from an Aggrieved Party pursuant to subparagraph (a)(1);

(2) The Exchange will not consider there to have been a Trade-Through if a [Member executes a] Block Trade *is executed* at a price inferior to the NBBO if [such Member satisfied] all Aggrieved Parties *are satisfied* pursuant to subparagraph (a)(2) following the execution of the Block Trade; and

(3) The Exchange will not consider there to have been a Trade-Through if a [Member executes a] trade *is executed* at a price inferior to the quotation being disseminated by an exchange that is not a Participant Exchange if [the Member made] a good faith effort *was made* to trade against the superior quotation of the non-Participant Exchange prior to trading through that quotation. A "good faith" effort to reach a non-Participant Exchange's quotation requires that a Member *or the Exchange* at least had sent an order that day to the non-Participant Exchange in the class of options in which there is a Trade-Through, at a time at which such non-Participant Exchange was not relieved of its obligation to be firm for its quotations pursuant to Rule 11Ac1-1 under the Exchange Act, and such non-Participant Exchange neither executed that order nor moved its quotation to a price inferior to the price of the [Member's] order within 20 seconds of receipt of that order.

* * * * *

Rule 7.6. Duty to Report Unusual Activity

When, in the opinion of a Board Broker, *PAR Official* or Order Book Official, there is any unusual activity, transaction, or price change or there are other unusual market conditions or circumstances which are, with respect to any option contract in which he is acting as Board Broker, *PAR Official* or Order Book Official, detrimental to the maintenance of a fair and orderly market, he shall promptly make a report to a Floor Official.

* * * Interpretations and Policies:

.01 To the extent unusual activity is apparent only through the inspection of trade tickets, a Board Broker, *PAR Official* or Order Book Official is not responsible for reporting such activity unless the trade tickets are brought to his attention.

* * * * *

Rule 7.11. Liability of Exchange for Actions of Board Brokers, [and] Order Book Officials, *and PAR Officials*

(a) In no event shall the Exchange be liable to members or persons associated therewith for any loss, expense, damages or claims arising out of any errors or omissions of a Board Broker or person associated therewith. Except to the extent provided in paragraph (b) of this Rule, the Exchange's liability to members or persons associated therewith for any loss, expense, damages or claims arising out of any errors or omissions of an Order Book Official *or PAR Official* or the assistants or clerks of an Order Book Official *or PAR Official* shall be subject to the limitations set forth in paragraph (a) of Rule 6.7 and to the further limitations set forth in paragraphs (b) and (c) of this Rule.

(b)(1) As used in this paragraph (b), the term "transaction" shall mean any single order or instruction which is placed with an Order Book Official *or PAR Official*, or any series of orders or instructions which is placed with an Order Book Official *or a PAR Official* at substantially the same time by the same member, and which relates to any one or more series of options of the same class. All errors and omissions made by an Order Book Official *or PAR Official* with respect to or arising out of any transaction shall give rise to a "single claim" against the Exchange for losses resulting therefrom as provided in this paragraph (b) and in paragraph (c), and the Exchange shall be free to assert any defense to such claim it may have. No claim shall arise as to errors or omissions which are found to have resulted from any failure by a member (whether or not the member is claiming against the Exchange pursuant to this paragraph (b)), or by any person acting on behalf of a member, to enter or cancel an order with such Order Book Official *or PAR Official* on a timely basis or clearly and accurately to communicate to such Order Book Official *or PAR Official*:

(i)-(vi) No Change.

In addition, no claim shall be allowed if, in the opinion of the arbitration panel provided for in subparagraph (3) of this paragraph (b), the member or other person making such claim did not take promptly, upon discovery of the errors or omissions, all proper steps to correct such errors or omissions and to establish the loss resulting therefrom.

(2) Absent reasonable justification or excuse, any claim by members or persons associated with members for losses arising from errors or omissions of an Order Book Official *or PAR*

Official, and any claim by the Exchange made pursuant to paragraph (d) of this Rule, shall be presented in writing to the opposing party within ten business days following the transaction giving rise to the claim; provided, that if an error or omission has resulted in an unmatched trade, then any claim based thereon shall be presented after the unmatched trade has been closed out in accordance with Rule 10.1 but within ten business days following such resolution of the unmatched trade.

(3)–(4) No Change.

(c) No Change.

(d) If any damage is caused by an error or omission of an Order Book Official or PAR Official which is the result of any error or omission of a member organization, then such member organization shall indemnify the Exchange and hold it harmless from any claim of liability resulting from or relating to such damage.

(e) No Change.

Rule 7.12 PAR Official

(a) A PAR Official is an Exchange employee or independent contractor whom the Exchange may designate as being responsible for (i) operating the PAR workstation in a DPM trading crowd with respect to the classes of options assigned to him/her; (ii) when applicable, maintaining the book with respect to the classes of options assigned to him/her; and (iii) effecting proper executions of orders placed with him/her. The PAR Official may not be affiliated with any member that is approved to act as a market maker.

(b) The PAR Official shall be responsible for the following obligations with respect to the classes of options assigned to him/her:

(i) Display Obligation: Each PAR Official shall display immediately the full price and size of any customer limit order that improves the price or increases the size of the best disseminated CBOE quote. For purposes of this Rule 7.12(b), “immediately” means, under normal market conditions, as soon as practicable but no later than 30 seconds after receipt (“30-second standard”) by the PAR Official. The term “customer limit order” means an order to buy or sell a listed option at a specified price that is not for the account of either a broker or dealer; provided, however, that the term “customer limit order” shall include an order transmitted by a broker or dealer on behalf of a customer.

The following are exempt from the Display Obligation as set forth under this Rule:

(A) An order executed upon receipt;

(B) An order where the customer who placed it requests that it not be displayed, and upon receipt of the order, the PAR Official announces in public outcry the information concerning the order that would be displayed if the order were subject to being displayed;

(C) An order for which immediately upon receipt a related order for the principal account of a DPM reflecting the terms of the customer order is routed to another options exchange that is a participant in the Intermarket Options Linkage Plan;

(D) The following orders as defined in Rule 6.53: contingency orders; one-cancels-the-other orders; all or none orders; fill or kill orders; immediate or cancel orders; complex orders (e.g., spreads, straddles, combinations); and stock-option orders;

(E) Orders received before or during a trading rotation (as defined in Rule 6.2, 6.2A, and 6.2B), including Opening Rotation Orders as defined in Rule 6.53(l), are exempt from the 30-second standard, however, they must be displayed immediately upon conclusion of the applicable rotation; and

(F) Large Sized Orders: Orders for more than 100 contracts, unless the customer placing such order requests that the order be displayed.

(ii) Execution. The PAR Official shall use due diligence to execute the orders placed in the PAR Official’s custody at the best prices available to him or her under the Rules of the Exchange.

(iii) A PAR Official shall not remove from the public order book any order placed in the book unless (A) the order is canceled, expires, transmitted through the Intermarket Options Linkage Plan, or is executed or (B) the PAR Official returns the order to the member that placed the order with the PAR Official in response to a request from that member to return the order;

(iv) Autobook: A PAR Official shall maintain and keep active on the PAR workstation at all times the automated limit order display facility (“Autobook”) provided by the Exchange. Only a senior trading operations official of the Exchange may determine the length of the Autobook timer for PAR Officials and a PAR Official may deactivate Autobook only with the approval of a senior trading operations official. For the purposes of this rule, a “senior Trading Operations official” is any duly appointed officer in the Exchange’s Trading Operations Division.

(c) Compensation of PAR Officials. The PAR Official shall be compensated exclusively by the Exchange, which shall determine the amount and form of compensation. No DPM, e-DPM, or

market maker shall directly or indirectly compensate or provide any other form of consideration to a PAR Official.

(d) Liability of Exchange for Actions of PAR Officials. The Exchange’s liability to members or persons associated therewith for any loss, expense, damages or claims arising out of any errors or omissions of a PAR Official or any persons providing assistance to a PAR Official shall be subject to Exchange rules, including the limitations set forth in Rule 6.7, Rule 6.7A, and Rule 7.11.

(e) Linkage Obligations. In connection with the performance of the PAR Official’s duties, the PAR Official shall be responsible for manually or automatically (1) routing linkage Principal Acting as Agent (“P/A”) Orders, Principal (“P”) Orders on behalf of orders in the custody of the PAR Official that are for the account of a broker-dealer (“P-BD Orders”), and Satisfaction Orders to other markets based on prior written instructions that must be provided by the DPM to the PAR Official (utilizing the DPM’s account); and (2) handling all linkage orders or portions of linkage orders received by the Exchange that are not automatically executed. When handling outbound P/A Orders, P-BD Orders and Satisfaction Orders, the PAR Official shall use due diligence to execute the orders entrusted to him/her and shall act in accordance with the prior written instructions provided by the DPM for P/A Orders, P-BD Orders, and Satisfaction Orders that the PAR Official represents. A PAR Official also shall act in accordance with CBOE rules regarding P/A, P, and Satisfaction Orders received through the Linkage.

* * * Interpretations and Policies:

.01 The Exchange shall assign a PAR Official to all applicable trading stations on or before [enter date 90 days after the effective date of this rule change].

* * * * *

Rule 8.51 Firm Disseminated Market Quotes

(a)–(f) No Change.

* * * Interpretations and Policies:

.01–.09 No Change.

.10 Timing of Firm Quote Obligations [in a DPM Trading Crowd]
[(a) Non-Hybrid Classes]

For purposes of determining when the firm quote obligations under Rule 8.51 attach in respect of orders received at a PAR workstation [terminal in a DPM trading crowd] and how the exemptions to that obligation provided in paragraph (e) of that Rule apply, [the responsible broker or dealer shall be deemed to receive an order, and] an order shall be deemed to be presented to the

responsible broker or dealer, at the time the order is *announced to the trading crowd* [received on the DPM's PAR workstation].

(b) Hybrid Classes

For purposes of determining when the firm quote obligations under Rule 8.51 attach with respect to orders received at a PAR workstation in a DPM trading crowd and how the exemptions to that obligation provided in paragraph (e) of that rule apply, the responsible broker or dealer shall be deemed to receive an order, and an order shall be deemed presented to the responsible broker or dealer

(i) At the time the order is announced to the trading crowd with respect to each responsible broker or dealer that is not the DPM for the class; and

(ii) At the time the order is received on PAR with respect to the DPM as the responsible broker or dealer.

As such, firm quote obligations for an order received on PAR may attach at two separate times for different responsible broker or dealers: at the time of receipt with respect to the DPM as a responsible broker or dealer and at the time of announcement with respect to non-DPM members of the trading crowd as responsible brokers or dealers.]

.11 No Change.

* * * * *

Rule 8.60. Evaluation of Trading Crowd Performance

(a) The Exchange's appropriate Market Performance Committee ("Committee") shall periodically evaluate the performance of Designated Primary Market-Makers ("DPMs"), market makers, and other members both individually and collectively as trading crowds in order to determine whether they are satisfactorily meeting their market responsibilities[, including, in the case of DPMs, both market-making and agency responsibilities]. For purposes of this rule, a DPM, a market-maker, other members or a trading crowd may be referred to as a market participant ("Market Participants"). The evaluation may depend in part on the results of a survey of members administered by the Exchange, designed to assist the Committee in determining the absolute and relative performance of Market Participants. The survey may consist of a questionnaire that solicits the views of members on the performance of Market Participants in respect of (1) quality of markets, (2) extent of competition in the crowd, (3) due diligence in representing orders as agent, (4) adherence to ethical standards, (5) carrying out administrative responsibilities, and (6)

such other matters as the Exchange may deem relevant.

In addition to the survey, the Committee may also consider any other relevant information, including but not limited to statistical measures of performance and such other factors and data as the Committee may determine to be pertinent to the evaluation of Market Participants.

(b)–(g) No Changes.

* * * Interpretations and Policies:

.01–.02 No Changes.

* * * * *

Rule 8.80. DPM Defined

A "Designated Primary Market Maker" or "DPM" is a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker (as defined in Rule 8.1) and is subject to the obligations under Rule 8.85 or as otherwise provided under the rules of the Exchange[, as a Floor Broker (as defined in Rule 6.70), and as an Order Book Official (as defined in Rule 7.1).] Determinations concerning whether to grant or withdraw the approval to act as a DPM are made by the Modified Trading System Appointments Committee ("MTS Committee") in accordance with Rules 8.83 and 8.90. DPMs are allocated securities by the Allocation Committee and the Special Product Assignment Committee in accordance with Rule 8.95.

Rule 8.81. DPM Designees

(a) No Change.

(b) Notwithstanding any other rules to the contrary, an individual must satisfy the following requirements in order to be a DPM Designee of a DPM:

(i)–(ii) No Change.

(iii) the individual must be registered as a Market-Maker pursuant to Rule 8.2 [and as a Floor Broker pursuant to Rule 6.71];

(iv)–(v) No Change.

Notwithstanding the provisions of subparagraph (b)(ii) of this Rule, the MTS Committee shall have the discretion to permit an individual who is not affiliated with a DPM to act as a DPM Designee for the DPM on an emergency basis provided that the individual satisfies the other requirements of subparagraph (b) of this Rule.

(c)–(d) No Change.

(e) A DPM Designee of a DPM may not trade as a Market-Maker [or Floor Broker] in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. [When acting on behalf of a DPM in its capacity as a DPM, a DPM

Designee is exempt from the provisions of Rule 8.8.]

* * * * *

Rule 8.85 DPM Obligations

(a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements in respect of each of the securities allocated to the DPM. To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)[(xiii)](xiv) of this Rule and the general obligations of a Market Maker under the Rules, subparagraphs (a)(i) through (a)[(xiii)](xiv) of this Rule shall govern. Each DPM shall:

(i)–(xiii) No change.

(xiv) *The DPM's account shall be used for P/A Orders and Satisfaction Orders routed by the Exchange for the benefit of an underlying customer order, and shall be used for P Orders routed by the Exchange for the benefit of an underlying broker-dealer order and to fill incoming Satisfaction Orders that result from a Trade Through that the Exchange effects. Further, the DPM shall be responsible for any charges incurred in the execution of such linkage orders.*

A DPM must provide to the Exchange written instructions for routing P/A Orders, P Orders on behalf of orders in the custody of the Exchange that are for the account of a broker-dealer, and Satisfaction Orders to other markets.

(b) Agency Transactions. [Each] A DPM shall *not execute* [fulfill all of the obligations of a Floor Broker or Order Book Official] *orders as an agent or Floor Broker in its allocated option classes.* [(to the extent that the DPM acts as a Floor Broker) and of an Order Book Official under the Rules, and shall satisfy each of the requirements contained in this paragraph, in respect of each of the securities allocated to the DPM. To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vii) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vii) of this Rule shall govern.

(i) Display Obligation: Each DPM shall display immediately the full price and size of any customer limit order that improves the price or increases the size of the best disseminated CBOE quote. "Immediately" means, under normal market conditions, as soon as practicable but no later than 30-seconds after receipt ("30-second standard") by the DPM. The term "customer limit order" means an order to buy or sell a

listed option at a specified price that is not for the account of either a broker or dealer; provided, however, that the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer. The following are exempt from the Display Obligation as set forth under this Rule:

(A) An order executed upon receipt;

(B) An order where the customer who placed it requests that it not be displayed, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were subject to being displayed;

(C) An order for which immediately upon receipt a related order for the principal account of a DPM reflecting the terms of the customer order is routed to another options exchange that is a participant in the Intermarket Options Linkage Plan;

(D) The following orders as defined in Rule 6.53: Contingency orders; one-cancels-the-other orders; all or none orders; fill or kill orders; immediate or cancel orders; complex orders (e.g., spreads, straddles, combinations); and stock-option orders;

(E) Orders received before or during a trading rotation (as defined in Rule 6.2, 6.2A, and 6.2B), including Opening Rotation Orders as defined in Rule 6.53(l), are exempt from the 30-second standard, however, they must be displayed immediately upon conclusion of the applicable rotation; and

(F) Large Sized Orders: Orders for more than 100 contracts, unless the customer placing such order requests that the order be displayed.

(ii) Not remove from the public order book any order placed in the book unless (A) the order is canceled, expires, or is executed or (B) the DPM returns the order to the member that placed the order with the DPM in response to a request from that member to return the order;

(iii) Accord priority to any customer order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority;

(iv) Not charge any brokerage commission; with respect to:

(1) The execution of any portion of an order for which the DPM has acted as both agent and principal, unless the customer who placed the order has consented to paying a brokerage commission to the DPM with respect to the DPM's execution of the order while acting as both agent and principal; or

(2) Any portion of an order for which the DPM was not the executing floor broker, including any portion of the

order that is automatically executed through an Exchange system; or

(3) Any portion of an order that is automatically cancelled; or

(4) Any portion of an order that is not executed and not cancelled.

(v) Act as a Floor Broker to the extent required by the MTS Committee; and

(vi) Not represent discretionary orders as a Floor Broker or otherwise.

(vii) Autobook Pilot. Maintain and keep active on the DPM's PAR workstation at all times the automated limit order display facility ("Autobook") provided by the Exchange. The appropriate Exchange Floor Procedure Committee will determine the Autobook timer in all classes under that Committee's jurisdiction. A DPM may deactivate Autobook as to a class or classes provided that Floor Official approval is obtained. The DPM must obtain such approval no later than three minutes after deactivation.]

(c)-(d) No Change.

(e) Requirement to Own Membership. Each DPM organization shall own at least one Exchange membership for each trading location in which the organization serves as a DPM. For purposes of this Rule, a trading location is defined as any separate identifiable unit of a DPM organization that applies for and is allocated option classes by the appropriate Allocation Committee. An Exchange membership shall include a transferable regular membership or a Chicago Board of Trade full membership that has effectively been exercised pursuant to Article Fifth(b) of the Certificate of Incorporation. The same Exchange membership(s) may not be used to satisfy this ownership requirement for different DPM organizations or different trading locations operated by the same DPM organization. [Each DPM shall have until May 12, 2003 to satisfy this ownership requirement, but each DPM organization must continually own at least one membership until that date.]

A DPM organization shall be exempt from the membership requirement under Rule 8.85(e) for the period of [enter effective date of this rule change] to [enter a date 90 days from the effective date of this rule change] if the DPM organization falls out of compliance with Rule 8.85(e) because the Exchange membership used to satisfy Rule 8.85(e) was, at the time the DPM organization fell out of compliance with Rule 8.85(e), held by an individual whose affiliation with the DPM organization has been terminated as a result of the implementation of Rule 7.12.

* * * Interpretations and Policies:

.01 [The Exchange may make personnel available to assist a DPM in the DPM's performance of the obligations of an Order Book Official, for which the Exchange may charge the DPM a reasonable fee.

.02] Willingness to promote the Exchange as a marketplace includes assisting in meeting and educating market participants (and taking the time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, and other like activities.

[.03] .02 Reserved.

[.04] .03 A DPM organization shall be deemed to own an Exchange membership for purposes of paragraph (e) of this Rule if a natural person owner of the DPM organization owns an Exchange membership that would otherwise qualify under paragraph (e) and such individual meets the following criteria: (1) Owns at least a 45% equity interest in the DPM organization; (2) maintains at least a 45% profit participation in the DPM organization; (3) is actively involved in the management of the DPM operation; and (4) maintains a constant presence on the Exchange trading floor as a primary DPM designee of the DPM organization.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to remove a DPM's obligation and ability to execute orders as an agent or Floor Broker in its allocated securities on the Exchange in any trading station. This proposed rule change also would allow the Exchange to designate an Exchange employee or independent contractor ("PAR Official") to be responsible for operating the PAR workstation in a trading station. Finally,

this proposed rule change also would implement several other amendments to conform other Exchange rules to the aforementioned changes, as detailed herein. Amendment No. 1, which supersedes the original rule filing in its entirety, proposes additional changes to certain Exchange rules relating to the operation of the Linkage Plan to accommodate the implementation of the pertinent PAR Official rules and the other proposed rule changes described herein.⁴

By rule, the Exchange has the authority to determine the extent to which an individual DPM must represent orders as a Floor Broker.⁵ The Exchange's uniform practice has been to require DPMs to act as Floor Brokers for the classes of options assigned to them. Accordingly, all DPMs on CBOE presently act as both agent and principal for orders in their respective allocated securities. The Exchange has now determined that it is in the best interest of the Exchange, its members and investors to eliminate a DPM's floor brokerage duties. This change would afford DPMs the ability to concentrate their efforts exclusively on their market-making functions and would eliminate the inherent risks associated with DPMs acting as both principal and agent with respect to orders they handle and trades they make as DPMs. The Exchange also believes that the responsibility for executing agency orders at DPM trading stations should be administered by an Exchange employee or independent contractor who has no interest that might conflict with the duties owed to the customer. The following will summarize the effects this proposed rule change would have on existing Exchange rules.

Agency Responsibilities

Generally, CBOE Rules 8.80 through 8.91 govern DPMs on the Exchange, and CBOE Rule 8.85 describes the specific obligations imposed on a DPM, including the general obligation, with respect to each of its allocated securities, to fulfill all of the obligations of a Market-Maker, of a Floor Broker (to the extent that the DPM acts as a Floor Broker), and of an Order Book Official under Exchange Rules. CBOE Rule 8.85(b), in particular, describes the several Floor Broker and agency functions that a DPM must perform.⁶

Some of these functions are currently determined at the discretion of the MTS Committee. This rule change proposes to eliminate provisions providing for the DPMs' broker and agency functions and would provide that DPMs "shall not execute orders as an agent or Floor Broker in its allocated option classes." Instead, the Exchange proposes to create a new category of market participant (the "PAR Official") who will be responsible for operating the PAR workstation in the trading stations. This responsibility would include handling and executing orders that are routed to the PAR workstation.

The PAR Official would be an Exchange employee or independent contractor designated by the Exchange to be responsible for (i) operating the PAR workstation; (ii) when applicable, maintaining the customer limit order book for the assigned option classes;⁷ and (iii) effecting proper executions of orders placed with him or her. The PAR Official would be prohibited from having an affiliation with any member that is approved to act as a market maker on the Exchange.

Other Affected Rules

Other Exchange rules also must be amended to allow the Exchange to reassign agency responsibilities and obligations from the DPM to the PAR Official, as detailed below.

Display Obligation. Currently, under CBOE Rule 8.85(b)(i), the DPM is required to immediately display the full price and size of any eligible customer limit orders when such orders represent buying or selling interest that is at a better price than the best disseminated CBOE quote.⁸ Because the DPM no longer would be operating the PAR workstation or executing orders as agent, the Exchange proposes to shift the display obligation in its entirety from the DPM to the PAR Official in such trading crowds.⁹ Accordingly, the PAR Official would be required to

should be required to act as a Floor Broker. CBOE Rule 8.85(b)(v), captioned "Agency Transactions," provides that each DPM is required to "act as a Floor Broker to the extent required by the MTS Committee." This concept is echoed in the general statement of a DPM's agency responsibilities as set forth in the first sentence of CBOE Rule 8.85(b): "Each DPM shall fulfill all of the obligations of a Floor Broker (to the extent that the DPM acts as a Floor Broker) * * *"

⁷ This provision will not apply to option classes that are on the CBOE's Hybrid System.

⁸ See CBOE Rule 8.85(b)(i); see also Exchange Act Release No. 51063 (January 21, 2005); 70 FR 4165 (January 28, 2005) (SR-CBOE-2004-35) (order approving the display obligation).

⁹ The display obligation set forth in CBOE Rule 8.85(b)(i) would be moved to proposed rule 7.12(b)(i) and also would include the various exceptions to the display obligation that are currently applied to the DPM obligation.

maintain and keep active the Exchange's automated limit order display facility, Autobook, on the PAR workstation.

Due Diligence Responsibility. Under the proposed rule, the PAR Official would be required to use due diligence to execute the orders at the best prices available to him or her under the rules of the Exchange.

Public Order Book Responsibilities. In addition to maintaining a responsibility to book eligible orders, the PAR Official also would be prohibited from removing booked public customer orders unless (A) the order is cancelled, expires, transmitted in accordance with Intermarket Option Linkage ("Linkage") obligations, or is executed or (B) the PAR Official returns the order to the member that placed the order with the PAR Official in accordance with a request from that same member.

Linkage Obligations. As the DPM would no longer be executing agency orders, this responsibility, and any associated Linkage obligations that previously were handled by the DPM would now fall upon the Exchange. As an employee (or independent contractor) of the Exchange, the PAR Official would be responsible for handling Linkage orders in the option classes appointed to him or her. Specifically, a PAR Official would have the means to (1) utilize a DPM's account to route Principal Acting as Agent ("P/A") Orders, Principal ("P") Orders on behalf of orders in the custody of the PAR Official that are for the account of a broker-dealer ("P-BD Orders"), and Satisfaction Orders to away markets based on prior instructions that must be provided by the DPM to the PAR Official and (2) handle all Linkage orders or portions of Linkage orders received by the Exchange that are not automatically executed. The PAR Official also would have the means to utilize the DPM's account to fill Satisfaction Orders that result from a Trade Through¹⁰ that the Exchange effects. Because the Linkage Plan requires that P/A orders be submitted for the account of a market maker,¹¹ the PAR Official must be able to utilize the DPM's account to fulfill the Linkage obligations imposed by CBOE rules.

CBOE Rule 8.85(a) would be amended to require a DPM to make available its account to the PAR Official for the purpose of enabling the PAR Official to satisfy certain Linkage-related obligations. CBOE Rule 8.85(a) also would be amended to obligate the DPM to provide the PAR Official with written

¹⁰ See CBOE Rule 6.80(19).

¹¹ See Linkage Plan Section 2(16)(a); see also CBOE Rule 6.80.

⁴ Exchange rules governing the operation of the Linkage Plan are set forth under CBOE Rules 6.80 through 6.85.

⁵ See CBOE Rule 8.85(b)(v).

⁶ This authority is delegated by CBOE Rule 8.85(b) to the Exchange's Modified Trading System Appointments Committee. Under CBOE's current Rules, it is up to the MTS Committee to decide whether and to what extent an individual DPM

instructions for routing P/A Orders, P-BD Orders, and Satisfaction Orders to other markets.¹² These written instructions should also include direction as to how the PAR Official should handle responses to Linkage Orders, as provided under CBOE Rule 6.81(d).¹³

Finally, when handling outbound P/A Orders, P-BD Orders, and Satisfaction Orders, the PAR Official shall use due diligence to execute the orders entrusted to him/her and act in accordance with the prior written instructions provided by the DPM for P/A Orders, P-BD Orders, and Satisfaction Orders that the PAR Official represents and act in accordance with CBOE rules regarding P/A, P, and Satisfaction Orders received through the Linkage.

Compensation of PAR Official. As an Exchange employee or independent contractor, the PAR Official's compensation would be determined and paid solely by CBOE. No DPM, e-DPM, or market maker would be permitted to directly or indirectly compensate or provide any other form of consideration to a PAR Official.

Liability of the Exchange for Actions of PAR Officials. The Exchange's liability for the actions of PAR Officials would be limited in the same manner as currently provided under existing Exchange rules, including, but not limited to, CBOE Rules 6.7 (Exchange Liability), 6.7A (Legal Proceedings Against the Exchange and its Directors, Officers, Employees, Contractors or Agents), and 7.11 (Liability of Exchange for Actions of Board Brokers, Order Book Officials and PAR Officials).

Firm Disseminated Market Quotes. Interpretation and Policy .10 to CBOE Rule 8.51 currently provides that, in the case of an order received at PAR workstations in DPM trading crowds, the DPM's firm quote obligation attaches at the time the order is received on the PAR workstation, regardless of whether the DPM is actually aware of the order at that time. This provision is a direct consequence of the fact that the DPM currently represents such orders in its capacity as a Floor Broker from the moment such orders are received on the PAR workstation. However, because the DPM no longer would be operating the

PAR workstation if the proposed rule change were approved, Interpretation and Policy .10 to CBOE Rule 8.51 would be modified such that the firm quote obligation would attach, when a DPM is the responsible broker or dealer, at the same time those obligations attach with respect to each other responsible broker or dealer—that is, when the order is announced to the trading crowd by the PAR Official.

Rules Relating to RAES Operations. Under CBOE's established procedures, in accordance with Interpretation and Policy .02(b)(iv) to CBOE Rule 6.8 (RAES Operations), a RAES-eligible order routed electronically to CBOE will not be automatically executed if the CBOE's disseminated quote is inferior to the NBBO by more than the step up amount and instead will be rerouted to the PAR workstation for non-automated handling. On the assumption that the DPM will always be responsible for representing such orders as a Floor Broker, the language of that Interpretation and Policy calls for the order to be "rerouted * * * to the DPM or OBO * * *" ¹⁴ In order to make this Interpretation and Policy consistent with the proposed rules that would assign the PAR workstation operation to the PAR Official, Interpretation and Policy .02(b)(iv) to CBOE Rule 6.8 would be revised to provide that a RAES-eligible order will be rerouted to "a PAR workstation in the trading crowd," without identifying the DPM as the particular crowd participant necessarily responsible for the order.

Rules Relating to CBOE Hybrid System's Automatic Execution Feature. Several other provisions within CBOE Rules also use terminology that presumes that, in a crowd with a DPM, only the DPM will be operating the PAR workstation. CBOE Rule 6.13(b)(iv) (CBOE Hybrid System's Automatic Execution Feature), in particular, in describing how orders in multiply traded options are routed to avoid automatic execution at prices inferior to the NBBO, states that such orders will be routed to "the DPM's PAR terminal." To make CBOE Rule 6.13 consistent with the proposed rules relating to the introduction of the PAR Official on the Exchange, CBOE Rule 6.13 would be amended to eliminate the suggestion that the DPM would always be responsible for the operation of the PAR workstation.

DPM Membership Ownership Requirement. CBOE Rule 8.85(e) provides that each DPM organization shall own at least one Exchange

membership for each trading location in which the organization serves as a DPM. In the interest of fairness and to ensure that the implementation of this proposed rule change does not unduly burden Exchange members, CBOE proposes the adoption of a three-month grace period to the membership ownership rule for those DPM organizations who may fall out of compliance solely because the Exchange membership previously being used to satisfy CBOE Rule 8.85(e) was, at the time the DPM organization fell out of compliance with CBOE Rule 8.85(e), held by an individual whose affiliation with the DPM organization has been terminated as a result of the implementation of CBOE Rule 7.12. This grace period would expire three months after the date on which this rule change is deemed effective by the Commission.

Duty to Report Unusual Activity. CBOE Rule 7.6 also will be require a PAR Official to report to a Floor Official any unusual activity, transactions, or price changes or other unusual market conditions or circumstances with respect to the PAR Officials appointed option classes, that may be detrimental to the maintenance of a fair and orderly market.

General DPM Rules. There are also other Exchange rules relating to DPMs that must be amended to reflect the fact that DPMs will not always be operating the PAR workstation or executing orders as agent with respect to their allocated option classes. These changes are reflected in the proposed rule text set forth above in Part I.

Implementation

Finally, to ensure a smooth and orderly transition from DPMs to PAR Officials of the responsibility for operating PAR workstations and executing agency orders, the Exchange proposes to implement this rule change to all applicable trading stations over a ninety day period from the effective date of this rule change. During this ninety-day transition period, any DPM who continues to operate the PAR workstation in its trading crowd would continue to be subject to the same agency obligations as currently provided under CBOE Rule 8.85(b), except that, upon the approval of this rule change eliminating CBOE Rule 8.85(b), these obligations instead would be reflected in a Regulatory Circular.

2. Statutory Basis

Because the proposed rule change would refine and enhance Exchange members' ability to meet certain regulatory requirements, the Exchange believes that the proposed rule change

¹² CBOE intends to file with the Commission a request for an exemption from the obligation to adhere to the provisions of the Linkage Plan that require the market maker through whom the P/A Order is routed to be functioning as the agent with respect to that order.

¹³ CBOE Rule 6.81(d) specifically addresses the situations in which (1) a CBOE member does not receive a response to a P Order or P/A Order within 20 seconds of sending the order or (2) a Participant Exchange cancels a CBOE member's response to a P Order or P/A Order.

¹⁴ For equity classes on CBOE, the DPM currently serves as the Order Book Official, or OBO.

is consistent with Section 6(b)¹⁵ of the Act in general, and furthers the objectives of Section 6(b)(5)¹⁶ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange neither solicited nor received comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2005-46 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-CBOE-2005-46. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2005-46 and should be submitted on or before August 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3828 Filed 7-18-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52021; File No. SR-CBOE-2005-50]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change to Modify the Designated Primary Market-Maker Participation Entitlement for Orders Specifying a Preferred DPM

July 13, 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 June 29, 2005, the Chicago Board Options

Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify the Designated Primary Market-Maker ("DPM") participation entitlement for orders specifying a Preferred DPM. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

Rule 8.87 Participation Entitlements of DPMs and e-DPMs

(a) Subject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.

(b) The participation entitlement for DPMs and e-DPMs (as defined in Rule 8.92) shall operate as follows:

(1) Generally.

(i) To be entitled to a participation entitlement, the DPM/e-DPM must be quoting at the best bid/offer on the Exchange.

(ii) A DPM/e-DPM may not be allocated a total quantity greater than the quantity that the DPM/e-DPM is quoting at the best bid/offer on the Exchange.

(iii) The participation entitlement is based on the number of contracts remaining after all public customer orders in the book at the best bid/offer on the Exchange have been satisfied.

(2) Participation Rates applicable to DPM Complex. The collective DPM/e-DPM participation entitlement shall be: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.

(3) Allocation of Participation Entitlement Between DPMs and e-DPMs. The participation entitlement shall be as follows: If the DPM and one or more e-DPMs are quoting at the best bid/offer on the Exchange, the e-DPM participation entitlement shall be one-half (50%) of the total DPM/e-DPM entitlement and shall be divided equally

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

by the number of e-DPMs quoting at the best bid/offer on the Exchange. The remaining half shall be allocated to the DPM. If the DPM is not quoting at the best bid/offer on the Exchange and one or more e-DPMs are quoting at the best bid/offer on the Exchange, then the e-DPMs shall be allocated the entire participation entitlement (divided equally between them). If no e-DPMs are quoting at the best bid/offer on the Exchange and the DPM is quoting at the best bid/offer on the Exchange, then the DPM shall be allocated the entire participation entitlement. If only the DPM and/or e-DPMs are quoting at the best bid/offer on the Exchange (with no Market-Makers at that price), the participation entitlement shall not be applicable and the allocation procedures under Rule 6.45A shall apply.

(4) Allocation of Participation Entitlement Between DPMs and e-DPMs for Orders Specifying a Preferred DPM. Notwithstanding the provisions of subparagraph (b)(3) above, the Exchange may allow, on a class-by-class basis, for the receipt of marketable orders, through the Exchange's Order Routing System when the Exchange's disseminated quote is the NBBO, that carry a designation from the member transmitting the order that specifies a DPM or e-DPM in that class as the "Preferred DPM" for that order. In such cases and after the provisions of subparagraph (b)(1)(i) and (iii) above have been met, then the Preferred DPM participation entitlement shall be 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; and 40% when there are two or more Market-Makers also quoting at the best bid/offer on the Exchange; and, 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange, subject to the following:

(i) if the Preferred DPM is not quoting at the best bid/offer on the Exchange then the participation entitlement set forth in subparagraph (b)(3) above shall apply; and

(ii) in no case shall the Preferred DPM be allocated, pursuant to this participation right, a total quantity greater than the quantity that the Preferred DPM is quoting at the best bid/offer on the Exchange.

The Preferred DPM participation entitlement set forth in subparagraph (b)(4) of this Rule shall be in effect until June 2, 2006 on a pilot basis.

* * * Interpretations and Policies:

.01 Notwithstanding subparagraph (b)(2) above, the Exchange may establish a lower DPM Complex Participation Rate on a product-by-product basis for

newly-listed products or products that are being allocated to a DPM trading crowd for the first time. Notification of such lower participation rate shall be provided to members through a Regulatory Circular.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 8.87 governs the participation entitlement of DPMs and e-DPMs (the "DPM Complex"). CBOE Rule 8.87(b)(2) states the actual participation entitlement percentages applicable to the DPM Complex, which are tiered to take into account the number of non-DPM Market-Makers also quoting at the best price. The current participation entitlement percentages are as follows: 50% when there is one Market-Maker also quoting at the best bid/offer on the Exchange; 40% when there are two Market-Makers also quoting at the best bid/offer on the Exchange; and 30% when there are three or more Market-Makers also quoting at the best bid/offer on the Exchange.

The CBOE recently obtained approval of a filing adopting a Preferred DPM Program ("Program").³ A modification to the applicable participation entitlement percentages under the Program was also recently effected.⁴ Under the current Program, order providers can send an order to the Exchange designating a "Preferred DPM" from among the DPM Complex. If the Preferred DPM is quoting at the National Best Bid or Offer ("NBBO") at

the time the order is received on the CBOE, the Preferred DPM is entitled to the entire participation entitlement described above. The Philadelphia Stock Exchange ("Phlx") recently obtained approval of a directed order program that allows the directed order recipient to receive a 40% participation entitlement on designated orders received while that entity is quoting at the NBBO.⁵ The International Securities ("ISE") also recently obtained approval to implement a preferencing program that allows a preferenced ISE market maker to receive a 40% participation entitlement on designated orders received while that market maker is quoting at the NBBO.⁶ According to the CBOE, the purpose of this filing is to match the participation rate of the Phlx directed order program and the ISE preferencing program.

In cases in which the Preferred DPM is quoting at the NBBO at the time the order is received on the CBOE, this proposal increases the participation entitlement for a Preferred DPM to 40% from 30% when there are two or more Market-Makers also quoting at the NBBO.⁷ The proposal does not modify the participation entitlement for orders that do not specify a Preferred DPM. The CBOE notes that the Preferred DPM Program is operating on a one-year pilot basis.

2. Statutory Basis

The CBOE believes the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5),⁹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in the furtherance of the purposes of the Act.

³ See Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (order approving SR-Phlx-2004-91).

⁶ See Securities Exchange Act Release No. 51818 (June 10, 2005), 70 FR 35146 (June 16, 2005) (order approving SR-ISE-2005-18).

⁷ Telephone conversation between John Roeser, Assistant Director, David Hsu, Special Counsel, Theodore Venuti, Attorney, Division of Market Regulation, Commission, and Angelo Evangelou, Senior Managing Attorney, CBOE, on July 6, 2005.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

³ See Securities Exchange Act Release No. 51779 (June 2, 2005), 70 FR 33564 (June 8, 2005) (order approving SR-CBOE-2004-71).

⁴ See Securities Exchange Act Release No. 51824 (June 10, 2005), 70 FR 35476 (June 20, 2005) (notice of filing and immediate effectiveness of File No. SR-CBOE-2005-45).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2005-50 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-50. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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 publicly available. All submissions should refer to File Number SR-CBOE-2005-50 and should be submitted on or before August 9, 2005.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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.¹⁰ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires among other things, that the rules of the Exchange are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Preferred DPM Program currently operates on a one-year pilot basis.¹² The proposal would increase the participation entitlement percentage for a Preferred DPM when there are two or more Market-Makers also quoting at the NBBO. Because the proposal would not increase the participation entitlement beyond the currently acceptable threshold, the Commission does not believe that the proposal will negatively impact quote competition on the CBOE.¹³ In addition, the Commission notes that it has approved similar participation entitlements percentages on other options exchanges.¹⁴

The CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal should allow the CBOE to immediately implement the participation entitlement percentage for a Preferred DPM similar to the percentage already in place on the Phlx and the ISE. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁵ for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

¹⁰ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² See *supra* note 3. The CBOE subsequently modified the amount of the participation entitlement allocable to the Preferred Market-Maker. See *supra* note 4.

¹³ See *supra* note 5.

¹⁴ See *supra* notes 5 and 6.

¹⁵ 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-CBOE-2005-50) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3829 Filed 7-18-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52019; File No. SR-CBOE-2005-53]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit a Limited Suspension of Exchange Membership Transactions to Allow for the Dissemination of Information Deemed Material to the Value of Exchange Memberships

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 July 8, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 3.14—*Sale and Transfer of Membership*, to permit the Exchange to suspend membership purchase and sale transactions for a limited period of time to allow for the dissemination of information deemed to be material to the value of Exchange memberships. Below is the text of the proposed rule change. Proposed new language is italicized.

* * * * *

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

RULE 3.14—Sale and Transfer of Membership

(a)–(d) Unchanged.

* * * *Interpretations and Policies:*

.01 *In circumstances in which the Board of Directors deems it necessary in the interest of maintaining a fair and orderly market in transferable Exchange memberships, the Board may declare a suspension of membership purchase and sale transactions to allow for the dissemination of information deemed to be material to the value of Exchange memberships. Any such suspension shall be limited in duration to no longer than one business day. During any such suspension, any bid or offer previously submitted to the Membership Department in accordance with Rule 3.13(b) or Rule 3.14(a) may be withdrawn by the submission to the Membership Department of a written revocation of the bid or offer. No new bids or offers may be submitted during any such suspension.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to allow for the temporary suspension of Exchange membership purchase and sale transactions in the interest of maintaining a fair and orderly market in transferable Exchange memberships. Specifically, the proposal would permit the Board of Directors to suspend membership transactions for a limited period of time to allow for the dissemination of information deemed to be material to the value of Exchange memberships. During a temporary suspension, any bid or offer to purchase or sell a membership previously submitted to the Exchange's Membership Department would be permitted to be withdrawn through the submission of a written revocation of the bid or offer. No new bids or offers

would be permitted to be submitted during a suspension. In addition, the proposed rule provides that no suspension would be permitted to last more than one business day.

Currently, the Exchange has no rule in place specifically authorizing the Exchange to temporarily suspend membership transactions. The Exchange believes that having such a rule would provide CBOE with the ability to allow for material information relating to the value of Exchange memberships to be disseminated and absorbed by members before additional seat transactions may be consummated. This would permit the Exchange to ensure that members engaging in seat transactions have an adequate opportunity to learn of the information so that they are not at an informational disadvantage and have time to reassess their current bids and offers in light of the new material information. Having such a rule would assist the Exchange in maintaining a fair and orderly market in CBOE memberships. The Exchange believes one business day is a sufficient amount of time to allow the seat market to absorb any disseminated material information.

2. Statutory Basis

The Exchange believes that having the ability to declare a temporary suspension of membership transactions would serve to promote a fair and orderly market for its memberships. For this reason, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b)³ of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5)⁴ that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and subparagraph (f)(6) of Rule 19b-4⁶ thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b-4(f)(6)(iii) of the Act,⁷ the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested the Commission to waive to 30-day operative delay. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date because such waiver will permit the Exchange to implement the rule without undue delay.⁸

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(f)(6).

⁷ 17 CFR 240.19b-4(f)(6)(iii).

⁸ For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78f(b)(5).

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-CBOE-2005-53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-CBOE-2005-53 and should be submitted on or before August 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3831 Filed 7-18-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52016; File No. SR-NYSE-2005-29]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of a Proposed Rule Change To Remove Incorrect Reference in Its Rule Relating to Failure To Honor an Arbitration Award

July 12, 2005.

On April 25, 2005, the New York Stock Exchange, Inc., ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 637. The proposed rule change was published for comment in the *Federal Register* on May 6, 2005.³ The Commission received one comment on the proposal.⁴ On July 5, 2005, the NYSE filed a response to the comment letter.⁵ This order approves the proposed rule change.

I. Description of Proposed Rule Change

Current NYSE Rule 637 provides that Exchange members, allied members, registered representatives, and member organizations that fail to honor arbitration awards of the NYSE, other self-regulatory organizations, or the American Arbitration Association are "subject to disciplinary proceedings in accordance with NYSE Rule 476, NYSE Rule 476A⁶ or Article IX" of the NYSE Constitution and Rules.

Although current NYSE Rule 637 specifies NYSE Rule 476A as a possible

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 51622 (April 27, 2005), 70 FR 24146.

⁴ See letter from Robert S. Clemente to Jonathan G. Katz, Secretary, Commission, dated May 13, 2005 ("Clemente Letter").

⁵ See letter to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, from Mary Yeager, Assistant Secretary, NYSE, dated July 5, 2005 ("NYSE Response Letter").

⁶ NYSE Rule 476A provides that the Exchange may impose a fine, not to exceed \$5000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules. The NYSE represents that the purpose of the NYSE Rule 476A procedure is to provide a meaningful sanction for a rule violation when the initiation of a disciplinary proceeding under NYSE Rule 476 would be more costly and time consuming than would be warranted given the minor nature of the violation, or when the violation calls for a stronger regulatory response than an admonition letter would convey. The NYSE states that NYSE Rule 476A preserves due process rights, identifies those rule violations that may be the subject of summary fines, and includes a schedule of fines.

vehicle for disciplinary action to remedy violations of NYSE Rule 637, NYSE Rule 637 was never added to NYSE Rule 476A's "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A." This discrepancy could be eliminated by adding NYSE Rule 637 to the list of rules in NYSE Rule 476A. However, due to the serious nature of any failure to honor an arbitration award,⁷ the Exchange's management concluded that violations of NYSE Rule 637 are not properly remedied through the minor fine provisions of NYSE Rule 476A. Therefore, the discrepancy would be more appropriately eliminated through an amendment deleting NYSE Rule 637's reference to NYSE Rule 476A.

II. Summary of Comment and NYSE's Response

The Commission received a comment letter on the proposed rule change that supported the adoption of the proposal.⁸ The commenter further suggested that the NYSE propose another change to NYSE Rule 637 to conform to NASD Rule 9554 by extending the penalty of disciplinary action to cover failure to honor an arbitration award to any settlement agreement in any dispute submitted to the NYSE. In its response to the comment, the NYSE maintained that the amendment to NYSE Rule 637 suggested by the commenter is beyond the scope of the proposed rule change.⁹

III. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letter, and the NYSE's response and 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.¹⁰ In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(6) of the Act¹¹ because it is designed to provide that NYSE's members and persons associated with its members be appropriately disciplined for violation of Exchange rules.

The Exchange has proposed to delete a cross-reference in NYSE Rule 637 that states that a failure to honor an arbitration award is punishable under the Exchange's minor rule violation

⁷ The NYSE represents that Exchange arbitration awards rarely remain unsatisfied.

⁸ See Clemente Letter, *supra* note 4.

⁹ See NYSE Response Letter, *supra* note 5.

¹⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(6).

⁹ 17 CFR 200.30-3(a)(12).

plan, when in fact it is not. The Commission believes that clarifying the Exchange's rules in this manner is appropriate. The one comment received by the Commission only makes suggestions for further Exchange rulemaking and, as such, does not raise any issue that would preclude approval of the instant proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-2005-29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3830 Filed 7-18-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52018; File No. SR-NYSE-2005-39]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend NYSE Rule 440H Relating to Activity Assessment Fees

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 June 1, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On July 6, 2005, the NYSE filed Amendment No. 1 to the proposal.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend NYSE Rule 440H to reflect the revised procedures by which the Exchange collects fees from its members and member organizations ("Membership") to offset its fee obligations under Section 31 of the Act.⁴ The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE's principal office, and at the Commission. The text of the proposed rule change also appears below. Additions are italicized; deletions are bracketed.

Rule 440H

[Transaction Fees]

Activity Assessment Fees

* * *Supplementary Material:

[Report on Form 120-A]

.10 Statutory background.—Section 31 of the Securities Exchange Act of 1934 ("Exchange Act" [§4721]), as amended, requires [that every] national securities exchanges *and associations* to [each year] pay to the Securities and Exchange Commission ("SEC") *certain fees and assessments on specified securities transactions*. [such sum as is required by Section 31 based on the aggregate dollar amount of the sales of securities (other than bonds, debentures and other evidences of indebtedness and any sale or any class of sales of securities which the SEC may, by rule, exempt from the imposition of the fee) transacted during the preceding year on such exchange.

The Exchange has issued the following directions:

(1) .20 *Calculation and payment of Activity Assessment Fees*.—Each member and each member organization *that effects securities* [engaged in clearing or settling] transactions [effected] upon the Exchange *that are defined in Section 31 of the Exchange Act as "covered sales" of securities shall pay to the Exchange Activity Assessment Fees based upon all of their covered sales. The Exchange shall calculate Activity Assessment Fees by multiplying the aggregate dollar amount of covered sales effected upon the Exchange by the member or member organization during the appropriate computational period by the Section 31(b) fee rate in effect during that computational period. Activity Assessment Fees shall be due and payable at such times and intervals as prescribed by the Exchange.* [shall maintain a daily record of the aggregate

dollar amount of the sales of securities made upon the Exchange and cleared or settled by him or it. The amount of money shall be computed upon the actual sales price, disregarding commissions and taxes. Blotter dates shall be used throughout. All sales of securities on the Exchange shall be included, other than bonds, debentures and other evidences of indebtedness and any sale or any class of securities which the SEC may, by rule, exempt from the imposition of the fee which the SEC imposes upon the Exchange under Section 31 of the Securities Exchange Act of 1934. Odd-lot dealers shall record both the round lots and the odd lots which they sell on the Exchange Floor. If a member or member organization clears and settles a transaction for a member or member organization which in turn clears it for another principal, only the member or the member organization settling the transaction shall include the transaction in its record kept pursuant to this paragraph. Monthly reports (Form 120-A) of the daily totals above referred to shall be submitted to the Exchange in the manner described below.

(2) Each such reporting member or member organization shall pay to the Exchange as a "Transaction Fee" a sum equal to the dollar amount as prescribed in Section 31 of the Securities Exchange Act of 1934 based on the total aggregate dollar sales volume reported monthly on Form 120-A. Such transactions as may from time to time be required to be reported on Form 120-A are hereinafter referred to as "120-A Transactions". The total amount payable as shown on the Form 120-A report shall be due and payable monthly, on such date each month as the Exchange's Rule 440 shall require the Form 120-A referred to therein to be filed with the Exchange, and payment of such charge, if any, as shall be due with respect to 120-A Transactions in a month shall be and hereby is required to accompany the Form 120-A filed with respect to such month.

At or before 10:30 a.m. on the 10th day of each month each member and each member organization required to report shall submit to the Treasurer's Department a report on Form 120-A showing with respect to 120-A Transactions settled during the preceding month; aggregate dollar sales volume; the Transaction Fee due thereon; number of shares of stock; number of warrants and number of rights to subscribe.] Members[,] and member organizations *that* [which] cease [the] *to effect* [clearing and settling of] securit[y]ies transactions *upon the Exchange* [shall promptly

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Ronald Rubin, Senior Special Counsel, NYSE, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission dated July 6, 2005. In Amendment No. 1, the NYSE added language to its statement of the purpose of the proposed rule change.

⁴ 15 U.S.C. 78ee.

render reports for any interim period resulting from such cessation and] shall promptly pay to the Exchange any sum due [under the above directions] pursuant to this rule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 440H to reflect the revised procedures by which the Exchange collects fees from the Membership to offset its fee obligations under Section 31 of the Act.

Background

NYSE Rule 440H currently requires each member or member organization engaged in clearing or settling transactions effected upon the Exchange to pay to the Exchange as a "Transaction Fee"⁵ a sum equal to the dollar amount as prescribed in Section 31 of the Act based on the total aggregate dollar sales volume the member or member organization has reported monthly on its Form 120-A. Historically, the funds collected by the Exchange from members and member organizations pursuant to NYSE Rule 440H were remitted in their entirety to the Commission.

On June 28, 2004, the Commission adopted new procedures to govern the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and national securities associations (collectively, "self-regulatory organizations" or "SROs") to the Commission pursuant to Section 31 of the Act ("Adopting Release").⁶ Under

the new procedures, each SRO uses new Form R31 to provide the Commission with data on its securities transactions. Utilizing a single, uniform methodology for all SROs, the Commission uses this data to calculate the amount of fees and assessments due. The Commission then presents each SRO with a bill equal to the aggregate dollar amount of its covered sales during the computational period multiplied by the fee rate under Section 31(b) or Section 31(c) of the Act applicable to covered sales for that computational period.⁷

Proposed Amendment to NYSE Rule 440H

One effect of the new Commission procedures was to explicitly sever any implied connection between fees the Commission charges SROs and fees the SROs charge their members, as well as any implied connection between those fees and any fees that SRO member organizations charge their customers.⁸ In theory, the Exchange could bill the membership for Activity Assessment Fees⁹ in amounts unrelated to the Exchange's Section 31 fees. However, the Exchange currently seeks to continue its policy of collecting from the membership Activity Assessment Fees that, as accurately as possible, equal the Exchange's Section 31 fees. In other words, the Exchange intends to pass the exact amount of its Section 31 fees through to the membership via Activity Assessment Fees.¹⁰

Commission fees will be based on the aggregate dollar amount of sales of securities transacted on the exchange (Section 31(b)), that national securities associations' fees will be based on the aggregate dollar amount of sales of securities transacted by or through any member of the association otherwise than on a national securities exchange (Section 31(c)), and that national securities exchanges are assessed for each "round turn transaction" in a security future (Section 31(d)).

⁷ If the Section 31 fee rate changes in the middle of a "traditional" computation period (e.g., in the middle of a quarter), the computational period may be broken up to facilitate appropriate application of the old and new fee rates.

⁸ In the Adopting Release, the Commission noted that, in practice, "SROs obtain the funds to pay Section 31 fees and assessments by assessing charges on their members, and the members in turn pass these charges to their customers." The Commission stressed that Section 31 of the Act "does not address the manner or extent to which covered SROs may seek to recover the costs of their Section 31 obligations from their members. Nor does Section 31 of the Act address the manner or extent to which members of covered SROs may seek to pass any such charges on to their customers." See Adopting Release, 69 FR at 41072.

⁹ Section 31 fees are identified as "SEC Activity Remittances" in all Exchange financial reports.

¹⁰ The Exchange has incurred, and continues to incur, the costs of developing systems necessary for compliance with the new SEC procedures, and for calculation and billing of the related Activity Assessment Fees. The Exchange reserves the right

Furthermore, because the new SEC procedures and amended NYSE Rule 440H eliminate any implied connection between Section 31 fees, Activity Assessment Fees, and the membership's fees to their customers,¹¹ the Exchange will not require member organizations to follow any specific procedure if they choose to pass their Activity Assessment Fees through to their customers. Thus, so long as the names or descriptions of fees charged to customers do not imply a connection to Section 31 fees, the Exchange's Activity Assessment fees, or any other fees those customers are not required to pay (e.g., "regulatory fees"), the membership has discretion as to the fees it charges its customers.¹²

On June 1, 2005, the Exchange will end the current "self-reporting" (i.e., Form 120-A) procedures related to Activity Assessment Fees, and will begin directly billing all members and member organizations engaged in clearing activities. Activity Assessment Fees will be assessed for all covered sales whose settlement dates fall within the applicable computational period, and will be calculated based on securities transaction data reported by the Depository Trust & Clearing Corporation (the same data used by the Exchange to prepare Form R31 for reporting to the Commission), and, as the NYSE noted in Amendment No. 1, on Crossing Sessions 2, 3, and 4 securities transaction data reported by the membership to the Exchange through the Crossing Sessions Reporting System (an application accessed through the Exchange's Electronic Filing Platform).

to bill the Membership some form of assessment to offset these or other Section 31-related costs.

¹¹ NYSE Information Memo No. 04-42, dated August 5, 2004, notified the membership that the new SEC procedures, and the fact that NYSE Rule 440H does not dictate whether or how members or member organizations should charge customers to recover amounts paid to the Exchange, rendered the instructions in the "Calculation of Fees—Rounding Up" section of Information Memo No. 01-51 inapplicable, and that "the Commission disapproves of the practice of naming fees in customers' trade confirmations 'Section 31 Fees' or 'SEC Fees.' Also, the Exchange filed SR-NYSE-2004-45, which added Interpretation .01 to NYSE Rule 440H: 'Members and member organizations should disregard the 'Calculation of Fees—Rounding Up' section of Information Memo No. 01-51.'" See Securities Exchange Act Release No. 50357 (September 13, 2004), 69 FR 56257 (September 20, 2004) (SR-NYSE-2004-45).

¹² NYSE Information Memo No. 05-36, dated May 13, 2005, emphasized that "member organizations that choose to pass their Activity Assessment Fees through to their customers are not required to follow any specific procedures, but they must be particularly careful to avoid labeling their fees with any name that suggests that such fees are imposed or mandated by the SEC, the Exchange, or some other regulatory body."

⁵ Although NYSE Rule 440H was titled "Transaction Fees" until the proposed rule change became effective, the Exchange has renamed those fees "Activity Assessment Fees" and currently uses that name exclusively.

⁶ Section 31 of the Act provides that the Exchange and other national securities exchanges'

Under these new procedures, the membership is no longer required to complete Form 120-A. Therefore, the Exchange proposes to delete the provisions in NYSE Rule 440H relating to Form 120-A. What remains in the amended rule is a more concise requirement that the membership pays Activity Assessment Fees at such times and intervals as prescribed by the Exchange, and a description of how the Exchange will calculate those fees. The title and language of the amended rule reflects the change in terminology from "Transaction Fees" to "Activity Assessment Fees."

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4) of the Act,¹⁴ in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among NYSE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁵ and subparagraph (f)(2) of Rule 19b-4 thereunder.¹⁶ Accordingly, the proposal, as amended, will take effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

or otherwise in furtherance of the purposes of the Act.¹⁷

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an E-mail to rule-comments@sec.gov. Please include File No. SR-NYSE-2005-39 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-NYSE-2005-39. 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 Commissions 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 NYSE.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2005-39 and should be submitted by August 9, 2005.

¹⁷ The effective date of the original proposed rule change is June 1, 2005 and the effective date of the amendment is July 6, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on July 6, 2005, the date on which the NYSE submitted Amendment No. 1.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3832 Filed 7-18-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52010; File No. SR-OCC-2005-06]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend By-Laws and Rules To Accommodate Short-Term Options Proposed for Trading by the Chicago Board Options Exchange, Inc., the American Stock Exchange, LLC, the International Securities Exchange, Inc., and the Pacific Exchange, Inc.

July 12, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on May 10, 2005, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on June 13, 2005, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested parties and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change is to amend OCC's By-Laws and Rules to accommodate short-term options proposed for trading by the American Stock Exchange, LLC, ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the International Securities Exchange, Inc. ("ISE"), and the Pacific Exchange, Inc. ("PCX") (collectively referred to as "Exchanges").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend OCC's By-Laws and Rules to accommodate short-term options proposed for trading by the Exchanges. On February 9, 2005, the Commission published notice of CBOE's proposal to amend its rules to permit the listing of options series that expire one week after being opened for trading.³ The Amex, ISE, and PCX also have submitted proposals to amend their rules to permit the listing of short-term options.⁴ Under this proposal, a short-term option series could be opened in any class of options that otherwise satisfies the applicable listing criteria of any participant exchange having rules for the trading of short-term options. Short-term option series could be American style or European style. Short-term option series typically would open on Friday and expire the following Friday. If Friday were not a business day, the short-term option series would be opened or would expire on the first business day immediately prior to that Friday.

Under the Exchanges' proposals, short-term option series with an underlying on which monthly contracts are A.M.-settled will be A.M.-settled, and short-term option series with an underlying on which monthly contracts are P.M.-settled will be P.M.-settled.⁵ No short-term option series on an option class will expire in the same week in which monthly option series of the same class expire.

Under the Exchanges' proposals, short term options would be traded initially under a one-year pilot program. Under the terms of the pilot program, the Exchanges will select up to five option classes on which short-term option series may be opened on any short-term option opening date. The Exchanges

also will be permitted to list those short-term option series on any option class that is selected by other securities exchanges that use a similar pilot program under their respective rules. Limiting the number of new options series created under this pilot program should help prevent a significant impact on system capacities of the Exchanges and of the Options Price Reporting Authority.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act⁶ and the rules and regulations thereunder applicable to OCC because it is designed to promote the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protect investors and the public interest. The proposed rule achieves these objectives by applying to short-term options the same By-Laws and Rules that are applicable to other classes of options.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).⁷ Section 17A(b)(3)(F) requires that the rules of a clearing agency remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest. The Commission finds that the approval of OCC's rule

change is consistent with this section because it will allow OCC to apply the same By-Laws and Rules to short-term options as it does other options classes.

OCC has requested that the Commission approve the proposed rule prior to the thirtieth day after publication of the notice of the amended filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because such approval will allow the Exchanges proposing to trade short-term options to commence doing so without any unnecessary delay.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-OCC-2005-06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-OCC-2005-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site, <http://>

² The Commission has modified the text of the summaries prepared by OCC.

³ Securities Exchange Act Release No. 51172 (February 9, 2005), 70 FR 7979 (February 16, 2005) [File No. SR-CBOE-2004-63].

⁴ File Nos. SR-Amex-2005-035, SR-PCX-2005-32, SR-ISE-2005-17.

⁵ S&P 100 Index Options ("OEX") and iShares S&P 100 Index Fund ("OEF") currently are the only P.M.-settled monthly options series.

⁶ 15 U.S.C. 78q-1.

⁷ 15 U.S.C. 78q-1(b)(3)(F).

www.optionsclearing.com. 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-OCC-2005-06 and should be submitted on or before August 9, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-OCC-2005-06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5-3811 Filed 7-18-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52013; File No. SR-PCX-2005-32]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto To List and Trade One Week 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 16, 2005, the Pacific Exchange, Inc. ("PCX" 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. PCX filed Amendment No. 1 with the Commission on April 5, 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 ("One Week 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 PCX's Web site (http://www.pacificex.com/legal/legal_pending.html), at PCX'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, PCX 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. PCX 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 One Week 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 classes⁴ on which One Week Option Series could be opened. A series could be opened on any Friday that is a business day ("One Week Option Opening Date") and would expire at the close of business on the next Friday that is a business day ("One Week 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 One Week Option Series for each One Week 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 One Week Option Series was opened for trading on the Exchange. No One Week 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 One Week Option Series. The intervals between strike prices on One Week Option Series would be the same as with the corresponding monthly option series.

The Exchange believes that One Week 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 One Week Option Series. Under the terms of the pilot program, the Exchange could select up to five options classes on which One Week Option Series may be opened on any One Week Option Opening Date. The Exchange also could list and trade any One Week 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 One Week 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 One Week Option Series program should be extended, expanded, and/or made permanent.

As originally proposed, all One Week Option Series would be P.M.-settled. However, in Amendment No. 1, the Exchange revised the proposal to provide that One Week Option Series would be P.M.-settled, except for One Week 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.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 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 revised the settlement times for the proposed One Week Options Series.

⁴ One Week Option Series could be opened in any option class that satisfied the applicable listing criteria under PCX rules (*i.e.*, stock options, options on Exchange Traded Fund Shares (as defined under PCX Rule 5.3), or options on indexes).

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 Act⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act⁶ 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 One Week 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 Act⁹ 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 PCX's substantially identical proposal is necessary. The Commission believes that accelerating approval of PCX'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-PCX-2005-32 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-PCX-2005-32. 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-PCX-2005-32 and should be submitted on or before August 9, 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-PCX-2005-32), 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. E5-3810 Filed 7-18-05; 8:45 am]

BILLING CODE 8010-01-P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1560).

TIME AND DATE: 9 a.m. (EDT), July 22, 2005, TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

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).

Agenda

Approval of minutes of meeting held on May 4, 2005.

*New Business***A—Budget and Financing**

A1. Proposed Rate Adjustment.

A2. Proposed Fiscal Year 2006 TVA Budget.

C—Energy

C1. Contract with Thunder Basin Coal Company LLC for Powder River Basin coal to supply various TVA fossil plants.

C2. Contract with Kennecott Energy and Coal Company and Antelope Coal for Power River Basin coal to supply various TVA fossil plants.

C3. Supplement to contract with IBM Corporation for mainframe products and services.

E—Real Property Transactions

E1. Sale of four noncommercial, nonexclusive permanent easements, affecting approximately 1.09 acres of land on Tellico Reservoir in Monroe and Loudon Counties, Tennessee, Tract Nos. XTELR-250RE, XTELR-251RE, XTELR-252RE, and XTELR-253RE.

E2. Modification of certain deed restrictions affecting approximately 3.9 acres of former TVA land on Norris Reservoir in Union County, Tennessee, Tract No. XNR-805, S.6X, to allow placement of fill and construction of dwellings and structures by Southland Group, Inc., owner and operator of Andersonville Marina and Campground.

E3. Sale of a permanent easement to TDS Telecom, Inc., for a telecommunication switching station, affecting approximately .02 acre of land on Fort Loudoun Reservoir in Knox County, Tennessee, Tract No. XFL-141E.

E4. Abandonment of certain transmission line easement rights affecting approximately 15.37 acres, Tract No. MWJS-23, in exchange for transmission line easement rights from Jackson Energy Authority, affecting approximately 11.51 acres in Madison County, Tennessee, Tract Nos. MWSJR-2, MWSJR-3, and MWSJR-4.

E5. Abandonment of certain transmission line easement rights affecting approximately 4.89 acres, Tract Nos. HUC-74 and HUC-75, in exchange for transmission line easement rights from Waste Management, Inc., affecting approximately 7.02 acres of land in Benton County, Tennessee, Tract Nos. HUCR-1 and HUCR-3.

E6. Abandonment of certain easement rights affecting approximately 84.9 acres of private land on Wilson Reservoir,

Tract Nos. WDRE4A, S.4X and WDRE4A, S.5X, in Lawrence County, Alabama, to allow existing cabins making up a part of Doublehead Resort to remain at this location.

E7. Grant of a noncommercial, nonexclusive permanent easement to Charles Perry, affecting approximately .43 acre of TVA land, Tract No. XGIR-943RE, for construction and maintenance of recreational water-use facilities, in exchange for approximately .55 acre of private land, Tract No. XGIR-3948, and Mr. Perry's agreement to extinguish access rights affecting approximately .1 acre of TVA land, Tract No. XGIR-666, S.1X, on Kentucky Reservoir in Benton and Henry Counties, Tennessee, and land use allocation change to the Kentucky Reservoir Land Management Plan to reflect these changes.

F—Other

F1. Approval to file condemnation cases to acquire easements and rights-of-way for transmission line projects affecting the Murphy-Nottely and the Murphy-Chatuge Transmission Lines in Cherokee County, North Carolina.

Information Items

1. Approval of delegations of authority relating to procurement contracts, financings, and personnel and compensation actions for an interim period, commencing June 20, 2005, and ending December 31, 2005.

2. Approval to file condemnation cases to acquire the right to enter to survey, appraise, and perform title investigations and related activities for the acquisition of easements and rights-of-way for the Cumberland Fossil Plant-Montgomery Transmission Line in Stewart County, Tennessee.

3. Approval to file condemnation cases to acquire easements and rights-of-way for the Aspen Grove-Westhaven Transmission Line in Williamson County, Tennessee, and the Murphy-Blairsville Tap to Ranger Transmission Line in Cherokee County, North Carolina.

4. Approval of a grant of a permanent easement to the Scottsboro Water Works, Sewer and Gas Board for the construction of a sewer line, affecting approximately .46 acre of land in Jackson County, Alabama, Tract No. XTGR-176S.

5. Approval of a grant of a permanent easement to the City of Chattanooga for highway relocation purposes and modification of utility and road easements necessary for a highway relocation project, affecting approximately 14.1 acres of land in

Hamilton County, Tennessee, Tract No. XTCR-204H.

6. Approval of delegation of authority to the Executive Vice President and General Counsel to review and approve the Financial Disclosure Report filed by TVA's Designated Agency Ethics Official.

7. Approval of delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a contract with the CIT Group Inc. for the lease of railroad cars.

8. Approval to enter in blanket contracts with GTSI Corp., Direct Integration Specialists, Northrop Grumman, and Netstar-1 for desktop equipment, servers, and maintenance for TVA's information technology infrastructure.

9. Approval to enter into a contract with RWE NUKEM, Inc., for the purchase of uranium hexafluoride to supply nuclear fuel for Browns Ferry Nuclear Plants Units 1 and 3.

10. Approval to revise and extend the Competitive Indexed Rate arrangements with BP Amoco Chemical Corporation.

11. Approval of adjusted blended energy prices under the Time-of-Use Blended Pricing Program arrangements with Arnold Engineering Development Center.

12. Approval to revise and extend the Competitive Indexed Rate arrangements with ISP Chemicals, Inc., Westlake Chemical Corporation, Arkema Inc., and Logan Aluminum Inc.

13. Approval to establish a Financial Trading Program for the purpose of hedging or otherwise limiting economic risks directly associated with the cost of natural gas and fuel oil for TVA's power generation operations, as well as certain other risks.

14. Approval of a delegation of authority to the Vice President, Corporate Finance and Risk Management, and designees, to purchase, renew, and take other actions in connection with directors and officers insurance under an existing contract with Marsh USA, Inc.

15. Approval to sell options to enter into an interest rate swap associated with call provisions that TVA has on approximately \$42 million of power bonds and to take related actions.

16. Approval of a delegation of authority to the Chief Financial Officer and others to enter into credit facilities with one or more financial institutions not to exceed \$5 billion at a time and to borrow under those credit facilities.

17. Approval to sell up to \$1 billion of TVA power bonds.

18. Approval to sell up to \$1 billion of TVA power bonds.

19. Approval of the amortization of deferred nuclear generating unit costs.

For more information: Please call TVA Media Relations at (865) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999. People who plan to attend the meeting and have special needs should call (865) 632-6000.

Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: July 14, 2005.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 05-14219 Filed 7-15-05; 10:23 am]

BILLING CODE 8120-08-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005-21858]

Performance of Advanced Crash Avoidance Systems; Request for Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice; Request for Information and Expression of Interest in Research Program.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is seeking information from all sources for its Advanced Crash Avoidance Technologies Program (ACAT). The ACAT program seeks to determine the safety impact of new and emerging technologies that are intended to help drivers avoid crashes, reduce the severity, and prevent injuries.

DATES: Responses to this announcement should be submitted on or before August 18, 2005. See the

SUPPLEMENTARY INFORMATION section for electronic access and filing addresses.

Note: This is neither a Request for Proposals nor an Invitation for Bids.

ADDRESSES: You may submit comments identified by the DOT DMS Docket Number above 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.

- 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.

Note that all comments received will be posted without change to <http://dms.dot.gov>, including any personal information provided. 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:

Raymond Resendes, Office of Vehicle Safety Research, NHTSA, NVS-332, 400 Seventh Street, SW., Washington, DC 20590 (telephone: (202) 366-2619, fax: (202) 366-7237).

SUPPLEMENTARY INFORMATION: The automotive industry has made significant progress in the development of advanced technologies that may offer the promise of reducing many crashes and their severities. Advanced technologies that include sensing, computing, positioning, and communications may have the ability to help drivers avoid imminent crashes or the events that often lead to crashes and reduce the severity of crashes that do occur. For example, some of these technologies address preventing rollovers, improving visibility, reducing tailgating and speed related crashes.

The effectiveness of these systems in reducing crashes is not well understood. Therefore, NHTSA is initiating a research program that seeks to answer the following questions:

1. What advanced vehicle features help to avoid a crash, and reduce crash severity when it occurs?
2. In what situations do these features work?
3. How effective are these features in preventing crashes and reducing their severity and protecting vehicle occupants?

NHTSA is implementing the program plan described below as the means of answering the above three questions with objective information on the performance capabilities of advanced safety features. NHTSA hopes that partnerships with motor vehicle manufacturers and suppliers will play an important role in the program. As part of this request for information, we are seeking expressions of interest in such partnerships. It is NHTSA's hope that this program will build on the

successes achieved in other cooperative programs, such as the Intelligent Transportation Systems program.

Program Plan: The following series of tasks will be used to develop tests and procedures for specific devices and systems:

Task 1—Priority Candidates: (1) Identify new or emerging technologies or systems that are priority candidates for evaluation in this program. (2) Develop a "top-level" engineering description of performance for each candidate. (3) Create a roadmap between performance features and relevant elements of the problem description. (4) Develop a subjective estimate of the impact of the system or technology on each relevant element of the problem description.

Task 2—Safety Impact Methodology: (1) Develop the methodology for incorporation of all relevant information into credible estimates of safety impact. (2) Create a computational framework that provides consistent results. (3) Create a standard set of descriptions for the distribution of crash types and causal factors. This will be a comprehensive description of the crash problem and crash and injury causation. The comprehensive description must be useable as a point of reference in assessing performance of systems or technologies. The problem descriptions will be coordinated with vehicle safety experts to assure that they are universally adopted as the basis for discussion of activities and studies. Variations on the framework will be necessary to accommodate all aspects of safety impact; including crash prevention, injury mitigation, effects of distraction, etc. Any technology that is already in production will have associated real-world crash data. This source needs to be incorporated in the general framework.

Task 3—Objective Tests: (1) Develop objective tests that can address the salient features of system performance. (2) Connect each feature of system performance to either a reduction in the likelihood that a risky situation will develop or the likelihood that a crash will occur in a specific situation. The definitions of the situations are derived from descriptions of situations in the problem description; translate each feature of system performance into a generic test condition. Each test condition must have the potential to be objective and repeatable.

The following steps are involved in determining the safety potential of candidate technologies: (1) Establish "representative" values, or range of values, for each parameter in the test condition. Input from crash data files

plus physical reasoning, perhaps supplemented by models and simulation, will be used to select appropriate values. (2) Determine appropriate metrics and use them to measure system performance.

These metrics must have a quantifiable relationship to either the level of exposure to risky situations or the level of crash prevention, severity reduction, and occupant protection potential of various advanced vehicle technologies.

Task 4—Performance Testing: In this task specific candidate technologies and systems will be identified to assess their performance. Systems that have the potential of degrading safety performance will be included for evaluation. Systems will be selected based on their potential safety impact (positive or negative) and level of market readiness. Specific full system test/tests will be developed for the selected systems. The tests performed under this task may be test-track, driving simulator, and/or reduced scale laboratory tests.

Task 5—Analysis and Reporting: The results will be analyzed in accordance with the methodology previously defined and the estimates of safety benefits will be computed. After agency review, this information will be shared with industry and the public via NHTSA's existing communication mechanisms.

Information Requested: The purpose of this document is to collect information about advanced technologies and their impact on automotive safety, and expressions of interest in participating in cooperative activities in order to assist NHTSA in developing and implementing the ACAT Program. Researchers and technical experts from automotive original equipment manufacturers (OEMs), their suppliers, and other interested parties that are able to collaborate with OEMs and Tier 1 suppliers are invited to submit technical information that responds to the following questions:

1. What are the qualifications of the responder?
2. Please describe the advanced crash avoidance and other safety technologies that your organization is developing?
3. What safety problem (*i.e.*, crash type, causal factors, and critical events) do these systems address?
4. Do methodologies or procedures and data exist to objectively test the ability of these systems to address specific crash problems?
5. Do you have suggestions on how to identify unintended consequences, such as driver adaptation, and their impact

prior to the widespread deployment of these systems?

6. Do you have any suggestions on how to improve the program?

NHTSA believes that partnerships with the motor vehicle industry are an important element of this program. As part of this request for information, we are seeking expressions of interest in participating in any of the following:

- a. Participating in a cooperative agreement to develop objective test procedures,
- b. Providing systems to support the development of objective test procedures,
- c. Providing existing test procedures or data.

Written Statements, Presentations, and Comments: We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

For written materials, two copies should be submitted to Docket Management at the address given at the beginning of this document. The materials must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to the submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their information in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at 400 Seventh Street, SW., Washington, DC 20590. Additionally, two copies of the above document from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

Issued on: July 13, 2005.

Joseph N. Kianianthra,
Associate Administrator for Vehicle Safety Research.

[FR Doc. 05-14107 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005-21267; 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 2002-2004 do not comply with S4.3(d) 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 31006). NHTSA received one comment.

Affected are a total of approximately 6117 Eagle F1 Supercar tires in four different sizes, manufactured from January 2002 to December 2004. S4.3(d) of FMVSS No. 109 requires that "each tire shall have permanently molded into or onto both sidewalls * * * (d) The generic name of each cord material used in the plies (both sidewall and tread area) of the tire." The labeling information on the noncompliant tires incorrectly states that one of the tire reinforcement materials is NYLON when the actual material in these tires is ARAMID.

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.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Public Law 106-414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222).

The agency received more than 20 comments on the tire labeling

information required by 49 CFR sections 571.109 and 119, part 567, part 574, and part 575. In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

Based on the information obtained from comments to the ANPRM and the consumer focus groups, we have concluded that it is likely that few consumers have been influenced by the tire construction information (number of plies and cord material in the sidewall and tread plies) provided on the tire label when deciding to buy a motor vehicle or tire.

Therefore, the agency agrees with Goodyear's statement that the incorrect markings in this case do not present a serious safety concern. (This decision is limited to its specific facts. As some commenters on the ANPRM noted, the existence of steel in a tire's sidewall can be relevant to the manner in which it should be repaired or retreaded.) 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 of the tire construction information will have an inconsequential effect on motor vehicle safety because most consumers do not base tire purchases or vehicle operation parameters on the tire labeling information found on the side of the tire. In addition, the tires are certified to meet all the performance requirements of FMVSS No. 109 and all other informational markings as required by FMVSS No. 109 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 13, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05-14108 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-21859; Notice 1]

Toyota Motor North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Toyota Motor North America (Toyota) has determined that certain model year 2003 through 2005 vehicles that it produced do not comply with S5(c)(2) of 49 CFR 571.225, Federal Motor Vehicle Safety Standard (FMVSS) No. 225, "Child restraint anchorage systems." Toyota has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Toyota has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Toyota's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 156,555 model year 2003 to 2005 Toyota Tundra access cab vehicles produced between September 1, 2002 and April 22, 2005. S5(c)(2) of FMVSS No. 225 requires each vehicle that

(i) Has a rear designated seating position and meets the conditions in S4.5.4.1(b) of Standard No. 208 * * * and, (ii) Has an air bag on-off switch meeting the requirements of S4.5.4 of Standard 208 * * * shall have a child restraint anchorage system for a designated passenger seating position in the front seat, instead of a child restraint anchorage system that is required for the rear seat. * * *

The subject vehicles do not have a child restraint lower anchorage in the front seat as required by S5(c)(2).

Toyota believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Toyota states that it considered whether rear-facing child restraints could be used in the noncompliant vehicles, and "is unaware of any rear-facing child

restraints that require lower anchorages in the vehicle." Toyota further states,

Most, if not all rear facing child restraints (even those with lower anchorage systems), have belt paths which allow the child restraint to be secured properly in the front passenger seat of the subject vehicles utilizing the front passenger seatbelt. We also note that child restraint manufacturers provide instructions with their child seats (even lower anchorage equipped child seats) on how to install their restraint with the seatbelt. In addition, all Toyota Tundra vehicles provide instructions on how to install child restraints with the seatbelt.

Toyota points out that model year 2000 to 2002 Tundra access cab vehicles have a front passenger airbag on-off switch as standard equipment but not lower anchorage system because they were produced prior to the FMVSS No. 225 lower anchorage requirement with which the subject vehicles noncomply. Toyota asserts that,

considering child restraint installation in the front passenger seat, the 2003-2005 MY vehicles (subject vehicles) are no different than the 2000-02 MY vehicles and further, it follows that the subject vehicles are no less safe than the 2000-02 MY vehicles.

Toyota further states that it considered

whether a lower anchorage child restraint can be mistakenly installed in the front passenger seat attempting to utilize the lower anchorage. Upon investigating the seat bight of the subject vehicles, we believe a current vehicle owner or subsequent owner could easily observe that no lower anchorage bars exist. We would also note that there are no portions of the seat frame within the seat bight of the front passenger seat that may be mistaken for lower anchorage bars.

Toyota notes that it has not received customer complaints regarding the absence of a front passenger seat child restraint lower anchorage system, not has it received any reports of a crash, injury or fatality due to this noncompliance.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL-401, 400 Seventh Street, SW., Washington, DC, 20590-0001. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except

Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at <http://dms.dot.gov>. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1-202-493-2251, or may be submitted to the Federal eRulemaking Portal: go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 18, 2005.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: July 13, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05-14109 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2005-21844]

Notice of Receipt of Petition for Decision That Nonconforming 2003-2005 Mercedes Benz SL Class (230) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003-2005 Mercedes Benz SL Class (230) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003-2005 Mercedes Benz SL Class (230) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their

manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 18, 2005.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. ("AMC"), of North Miami, Florida (Registered Importer 01-278) has petitioned NHTSA to decide whether nonconforming 2003-2005 Mercedes Benz SL Class (230) passenger cars are eligible for

importation into the United States. The vehicles which AMC believes are substantially similar are 2003-2005 Mercedes Benz SL Class (230) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003-2005 Mercedes Benz SL Class (230) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2003-2005 Mercedes Benz SL Class (230) passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003-2005 Mercedes Benz SL Class (230) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, and 302 *Flammability of Interior Materials*.

The petitioner states that the vehicles also conform to the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Inscription of the word "brake" on the instrument cluster in place of the international ECE warning symbol (b) replacement or conversion of the speedometer to read in miles per hours, and installation of a U.S.-model instrument cluster. U.S. version

software must also be downloaded to meet the requirements of this standard.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Installation of U.S.-model headlamps and front side marker lamps.

Standard No. 110 *Tire Selection and Rims*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection*: Installation of U.S. version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems*: Installation of U.S. version software to ensure that the systems meet the requirements of this standard.

Standard No. 208 *Occupant Crash Protection*: Installation of U.S. version software to ensure that the seat belt warning system meets the requirements of this standard.

Petitioner states that the vehicle's restraint system components include U.S.-model airbags and knee bolsters, and combination lap and shoulder belts at the outboard front designated seating positions.

Standard No. 209 *Seat Belt Assemblies*: Inspection of all vehicles and replacement of any non-U.S.-model seat belts with U.S.-model components on vehicles that are not already so equipped.

Standard No. 210 *Seat Belt Assembly Anchorage*: Inspection of all vehicles and replacement of any non-U.S.-model seat belt anchorage components with U.S.-model components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity*: Inspection of all vehicles and installation of U.S.-model components, on vehicles that are not already so equipped, to ensure compliance with the standard.

Standard No. 401 *Interior Trunk Release*: Installation of U.S.-model components on vehicles that are not already so equipped, to ensure compliance with the standard.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL-401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 a.m. to

5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,
Director, Office of Vehicle Safety Compliance.
[FR Doc. 05-14143 Filed 7-18-05; 8:45 am]
BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005-20046; Notice 2]

Bridgestone/Firestone North America Tire, LLC. Grant of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North America Tire, LLC has determined that approximately 937 size P175/65R14, Bridgestone WS50Z tires do not meet the labeling requirements mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone 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." FMVSS No. 109 (S4.3 (e)) requires that each tire shall have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different.

Notice of receipt of the application was published, with a 30-day comment period, on February 1, 2005, in the **Federal Register** (70 FR 5267). NHTSA received no comment on this application.

The noncompliance with S4.3 (e) relates to the sidewall markings. Bridgestone/Firestone Nasu, Japan Plant produced approximately 937 tires with incorrect markings during the DOT weeks of 2702, 1203, and 1303. The noncompliant tires were marked: "2

STEEL & 1 POLY." The correct marking required by FMVSS No. 109 is as follows: "2 STEEL & 1 POLY & 1 NYLON."

Bridgestone/Firestone stated that the noncompliant tires were actually constructed with more tread plies than indicated on the sidewall marking. Therefore, Bridgestone/Firestone believes this noncompliance is particularly unlikely to have an adverse affect on motor vehicle safety and is clearly inconsequential in that regard. They reported that the noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

The Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act (Pub. L. 106-414) required, among other things, that the agency initiate rulemaking to improve tire label information. In response, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on December 1, 2000 (65 FR 75222). The agency received more than 20 comments on the tire labeling information required by 49 CFR Sections 571.109 and 119, Part 567, Part 574, and Part 575. With regard to the tire construction labeling requirements of FMVSS No. 109, S4.3, paragraphs (d) and (e), most commenters indicated that the information was of little or no safety value to consumers. However, according to the comments, when tires are processed for retreading or repairing, it is important for the retreader or repair technician to understand the make-up of the tires and the types of plies. This enables them to select the proper procedures for retreading or repairing the tires. A steel cord radial tire can experience a circumferential or "zipper" rupture in the upper sidewall when it is operated under inflated or overloaded. If information regarding the number of plies and cord material is removed from the sidewall, technicians cannot determine if the tire has a steel cord sidewall ply. As a result, many light truck tires will inadvertently be inflated outside a restraining device or safety cage, presenting a substantial threat to the technician. This tire construction information is critical when determining if the tire is a candidate for a zipper rupture and additional safety precautions. In this case, since the steel cord construction is properly identified on the sidewall, the technician will have sufficient notice.

In addition, the agency conducted a series of focus groups, as required by the TREAD Act, to examine consumer

perceptions and understanding of tire labeling. Few of the focus group participants had knowledge of tire labeling beyond the tire brand name, tire size, and tire pressure.

The agency believes that the true measure of inconsequentiality to motor vehicle safety, in this case, is the effect of the noncompliance on the operational safety of vehicles on which these tires are mounted. Since the tires had more tread plies than indicated on the sidewall, the labeling noncompliance has no effect on the performance of the subject tires. A tire with more tread plies is likely to be a more robust tire even though it has no additional load-carrying capacity.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance is inconsequential to motor vehicle safety. Accordingly, its application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(Authority: 49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 13, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05-14140 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34712
(Sub-No. 1)]

The Kansas City Southern Railway Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a written trackage rights agreement entered into between BNSF and The Kansas City Southern Railway Company (KCS), has agreed to provide KCS with non-exclusive, overhead, temporary trackage rights, to expire on November 15, 2005, over BNSF's line of railroad between milepost 307.5, in Neosho, MO, and milepost 3.5X, at Murray Yard, in Kansas City, MO, a distance of approximately 229.1 miles. The original trackage rights granted in *The Kansas City Southern Railway Company—Temporary Trackage Rights Exemption—BNSF Railway Company*, STB Finance Docket No. 34712 (STB served on June 22, 2005), covered the

same line, but are due to expire on July 21, 2005. The purpose of this transaction is to modify the temporary overhead trackage rights exempted in STB Finance Docket No. 34712 to extend the expiration date from July 21, 2005, to November 15, 2005.

The transaction is scheduled to be consummated on July 21, 2005. The modified temporary overhead trackage rights will allow KCS to continue to bridge its train service while KCS's main lines are out of service due to certain programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employees affected by the acquisition of the temporary rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34712 (Sub-No. 1), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on William A. Mullins, Baker and Miller, PLLC, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: July 11, 2005.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 05-14097 Filed 7-18-05; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34720]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

BNSF Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), submits this verified notice for an exemption of the modified written trackage rights agreement governing BNSF's existing overhead trackage rights over UP's line of railroad between Crestline Street MP 163.52 and Helena Street MP 163.89, approximately 0.37 miles, on UP's Wallace Subdivision (the Joint Trackage) in Spokane, WA.¹ The modification of trackage rights relates to BNSF's assumption of maintenance functions for a particular segment of the Joint Trackage. BNSF will continue to have rights to use the Joint Trackage as provided in the Agreement.

The transaction is scheduled to be consummated on July 12, 2005, and operations under this exemption are planned to begin on that date.

The purpose of this transaction is to modify the Agreement to change the maintenance obligations in order to promote operating and maintenance efficiencies and better align the parties' maintenance obligations relative to usage.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34720 must be filed with the Surface Transportation Board, 1925 K

¹ BNSF acquired the nonexclusive right to use the Joint Trackage under an agreement dated February 22, 1973, by and between the Oregon-Washington Railroad & Navigation Company, and its lessees, UP and Burlington Northern Inc. (BNSF's predecessor in interest), as amended by a supplemental agreement dated January 21, 1974, and further amended by a Letter Agreement dated July 27, 1988 (collectively, the Agreement).

Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Sarah W. Bailiff, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 11, 2005.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 05–14098 Filed 7–18–05; 8:45 am]

BILLING CODE 4915–01–P



Federal Register

**Tuesday,
July 19, 2005**

Part II

Department of Transportation

Office of the Secretary

14 CFR Part 382

**Nondiscrimination on the Basis of
Disability; Technical Assistance Manual;
Final Rule**

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****14 CFR Part 382****[Docket No. OST-2005-20952]****Nondiscrimination on the Basis of Disability****AGENCY:** Office of the Secretary, Department of Transportation (DOT).**ACTION:** Technical Assistance Manual.

SUMMARY: This document responds to a Congressional mandate for the U.S. Department of Transportation to provide a technical assistance manual to air carriers and individuals with disabilities concerning their rights and responsibilities under the Air Carrier Access Act and DOT regulations.

FOR FURTHER INFORMATION CONTACT:

Blane A. Workie, Office of the General Counsel, Department of Transportation, 400 7th Street, SW., Room 4116, Washington, DC 20590, 202-366-9342 (voice), (202) 366-0511 (TTY), 202-366-7152 (fax), blane.workie@dot.gov (e-mail). Arrangements to receive this notice in an alternative format may be made by contacting the above named individual.

SUPPLEMENTARY INFORMATION: The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21), which was enacted on April 5, 2000, required, among other things, that DOT provide a technical assistance manual to air carriers and individuals with disabilities concerning their rights and responsibilities under the Air Carrier Access Act (ACAA) and its implementing regulation in 14 CFR part 382 (part 382). See 49 U.S.C. 41705(c). Responding to this legislative mandate, on April 20, 2005, DOT published a draft Technical Assistance Manual (TAM) relating to air travel by passengers with disabilities and requested public comment. (70 FR 20640). DOT received comments from three trade associations for carriers [Air Transport Association of America (ATA), Regional Airline Association (RAA), and International Air Transport Association (IATA)], one U.S. carrier [Delta Air Lines (Delta)], one foreign carrier [Mexicana Airlines (Mexicana)] and two individuals for a total of seven comments on the draft TAM. The Department has revised the TAM based on the public comments received and to include several clarifications to make the TAM easier to read and understand.

Discussion of Public Comments*1. General Comments*

ATA, IATA, and RAA expressed concern that publication of the TAM at this time would be premature and suggested delaying its publication pending the conclusion of the rulemakings regarding part 382, *i.e.* the Notice of Proposed Rulemaking (NPRM) extending part 382 to foreign carriers (69 FR 64364), an NPRM still in preparation to accommodate passengers who are deaf, hard of hearing and deaf-blind, and an NPRM still in preparation concerning the needs of passengers who require in-flight medical oxygen. ATA and RAA argued that finalizing the TAM before completing the upcoming rulemakings involving part 382 would be counterproductive and contrary to congressional intent since these rulemakings would likely require significant revisions to the TAM. IATA further stated that it cannot comment on the TAM as it views it as a "work in progress" that will be subject to several changes in the future. On the other hand, Mexicana commented that, although the final rule modifying part 382 to cover foreign air carriers has not yet been issued, it believed that the TAM would be helpful in assisting and guiding foreign carriers in implementing programs and policies that fulfill the general obligations of non-discrimination on the basis of disability in air travel.

As a separate matter, IATA noted that it found the TAM to be too lengthy and complex to be easily understood by individuals whose native language is not English and suggested that DOT develop a plain language version.

DOT also received comments from members of the general public. One individual requested that DOT not allow the use of cellular telephones onboard aircraft in flight. Another commenter implied that DOT is making changes to its disability rules without public comment/consultation and appeared to be asking DOT to consult with members of the public before making any changes to its disability-related regulations. This commenter also seemed concerned about the risk to his health or safety if carriers permit an individual who has a communicable disease or infection to fly on an aircraft and asked that DOT require carriers to operate "a safe, healthful plane."

DOT Response: DOT appreciates the reason that several commenters recommended that the publication of the TAM be delayed until the upcoming rulemakings regarding part 382 have been completed. However, there has already been too lengthy a delay in the

publication of this TAM. Congress required DOT to provide a technical assistance manual to air carriers and individuals with disabilities in April 2000, and it is likely that the rulemakings regarding part 382 will not be finalized until at least 2006. Therefore, DOT opts not to delay completion of the TAM. The TAM will be revised, as needed, after the rulemakings are completed.

With regard to the comment that the TAM is too lengthy and the recommendation that DOT develop a plain language version for use by individuals whose native language is not English, DOT believes that the TAM, as written, is straightforward and written in plain English. DOT does recognize that the TAM is a lengthy document, which is primarily a result of our effort to ensure that each section of the TAM is a separate "stand alone document." Because the TAM follows the chronological path of an air traveler with a disability from making a reservation through the completion of the trip and each subject is discussed in the context of the particular stage of the trip, a particular topic may be raised in more than one section. DOT will revisit the issue of whether to restructure the TAM for greater clarity, including using additional "plain language" techniques (*e.g.*, question and answer format) to the extent feasible to improve the clarity of the TAM, at the time that the TAM is revised to reflect changes in part 382 that may result from the current and anticipated rulemakings.

With respect to the comments received from members of the public, they do not necessitate any changes to the TAM. Cellular telephone usage on aircraft is not addressed in the TAM and is outside the TAM's scope. As for the comment regarding consultation with members of the public prior to the issuance of a disability rule, DOT has always and will continue to provide public notice of any rulemaking in accordance with the Administrative Procedure Act (APA). DOT has even gone beyond APA requirements to provide notice to the public of guidance documents such as the publication of this TAM in the **Federal Register**. Finally, with regard to the comment that DOT mandate carriers to operate a safe and healthful aircraft, DOT believes that carriers already do provide such flights for their passengers. Further, the Federal Aviation Administration (FAA) and not OST is the agency that issues air carrier safety regulations.

2. Chapter 1: Understanding How To Use This Manual

One carrier and two carrier associations sought further assurances from DOT that the TAM's use would not be mandatory and that the TAM would not expand air carriers' legal obligations under part 382. To this end, there was a suggestion that DOT add language in the introduction of the TAM stating clearly that the TAM is a guidance document and that the TAM's language and examples provided are consistent with, and do not exceed, current law.

DOT Response: DOT restates its position that the TAM does not impose additional legal obligations on carriers. Further, as requested, DOT has added language in the introduction of the TAM to explain that the TAM does not expand air carriers' legal obligations or establish new requirements under the law. DOT also clarifies that it is not mandating the use of the TAM but rather encouraging its use to ensure the proper implementation of part 382.

3. Chapter 2: Learning the Basics About the Law Protecting Air Travelers With Disabilities

ATA expressed concern that DOT is creating an impression that a violation of the ACAA and part 382 occurs in circumstances where an air carrier chooses to provide ground transportation and overnight accommodations to passengers because of a flight cancellation but is unable to provide accessible ground transportation and overnight accommodations to a passenger with a disability. It further remarked that air carriers will make every reasonable effort to locate and provide accessible ground transportation and accommodations but such accommodations may not always be available. The carrier association also disputes DOT's interpretation that section 382.39(a)(1) requires an air carrier to provide personnel to assist passengers with disabilities in carrying baggage through the airport terminal.

DOT Response: A violation of the ACAA and part 382 does occur in circumstances where an air carrier chooses to provide ground transportation and overnight accommodations to passengers because of a flight cancellation but is unable to provide accessible ground transportation and overnight accommodations to a passenger with a disability. Section 382.7(a)(3) prohibits a carrier from excluding a passenger with a disability from or denying the person the benefit of any air transportation or related services that

are available to other persons except when specifically permitted by another section of part 382. Further, ground transportation companies and hotels are required to comply with the Americans with Disabilities Act. As a result, carriers should not have difficulty in locating accessible ground transportation and overnight accommodations for a passenger with a disability. Of course, DOT recognizes that there may be unusual circumstances under which carriers may not be able to provide accessible ground transportation and hotel accommodation to a passenger with a disability but such a failure would still be a violation of the ACAA and part 382. In such situations, DOT's Aviation Enforcement Office may choose to use its discretionary power and not pursue enforcement action if the carrier can demonstrate that it made every reasonable effort to locate and provide accessible ground transportation and accommodations but they simply were not available.

With respect to ATA's assertion that section 382.39(a)(1) does not require carriers to assist passengers with disabilities in carrying their baggage through the airport terminal, DOT disagrees. DOT believes that implicit in the requirement to provide enplaning, deplaning and connecting assistance is the obligation of carriers to assist passengers with disabilities with carry-on or gate-checked luggage as they go between connecting flights or between a terminal entrance and a gate.

4. Chapter 3: Assisting Air Travelers With Disabilities Planning a Trip

ATA contends that the example DOT provided of a passenger with a disability who does not meet the advance notice requirement to check-in his battery-powered wheelchair and spillable battery is misleading and misstates the requirement in section 382.33(c) because it implies that the late-arriving passenger and not the air carrier makes the determination as to whether the service or accommodation can be provided without delaying the flight. ATA also strongly disagrees with the DOT's interpretation that section 382.35 requires an air carrier to provide free transportation to a person who volunteers to be an attendant for a disabled passenger that the carrier insists needs an attendant over the passenger's objection.

Delta expressed serious concerns that the draft TAM states that the carrier should be able to provide information to a passenger regarding seats unavailable for use by an individual with a disability (e.g., exit row seat) and the

location of seats with a movable armrest. Delta explained that it would not be able to provide information about the seats on its aircraft if a passenger makes a flight reservation more than a few days in advance of his/her flight because the specific location of seats is determined by ship number and the carrier assigns an aircraft to a specific flight by ship number only two or three days in advance of the flight. The carrier also asked that the language in the service animal section be clarified so it is clear that current regulations require that another seat be offered if a service animal cannot be accommodated at the passenger's assigned seat only when a seat exists in the same class of service.

Mexicana objected to language in the draft TAM indicating that carrier personnel would be required to make a determination as to whether a communicable disease poses a direct threat to the health or safety of others by an assessment based on reasonable judgment relying on "current medical knowledge" or the "best available objective evidence." The carrier expressed concern that this requirement would be an undue burden and create extensive legal liabilities for the carrier.

DOT Response: It was not DOT's intention to imply that a late-arriving passenger who wants to check-in his or her battery-powered wheelchair would make the determination as to whether the service can be provided without delaying the flight. Under section 382.33(c), if a passenger does not meet advance notice or check-in requirements, the carrier must nonetheless provide the service requested if it can do so by making a reasonable effort. The advance notice provision allows carriers sufficient time to prepare to make whatever special arrangements may be needed to provide certain requested accommodations. However, if advance notice is not provided, it has always been DOT's intention that the carrier would make the determination as to whether it can provide the requested accommodation by making a reasonable effort. The advance notice example involving Mr. Thomas provided in the TAM discusses Mr. Thomas' perception that it is feasible to provide the requested accommodation without delaying the flight but properly states that the carrier must accommodate Mr. Thomas, his battery-powered wheelchair and the spillable battery even though Mr. Thomas did not provide advance notice "[i]f this is the case," i.e., if it is feasible to provide the requested accommodation without delaying the flight. In other words, the requirement for a carrier to provide the requested

accommodation applies even if advance notice has not been provided if it can be accomplished through reasonable efforts and this determination is for the carrier, not a passenger, to make.

DOT has modified the language in the TAM regarding service animals to clarify that if a service animal cannot be accommodated at the passenger's assigned seat then a carrier is required to offer that passenger another seat in the same class of service. The carrier is not obligated to offer a seat in a better class of service (e.g., first class seat instead of coach seat) to accommodate the disability.

DOT declines to modify language in the TAM pertaining to information carriers should provide passengers with a disability regarding seats unavailable for their use (e.g., exit row seat) and the location of seats with a movable armrest. The TAM accurately discusses the requirement in section 382.45(a)(1). It states that accessibility information pertaining to the specific aircraft scheduled for a specific flight is required when *feasible* (emphasis added). In addition, the non-mandatory word "should" rather than "must" is used to describe the carriers' obligation to provide information about aircraft accessibility for passengers with a disability which leaves open the possibility that there may be times when carriers would not be violating 382.45(a)(1) by not providing the requested information because it was not feasible to do so.

With respect to the comment concerning communicable diseases, DOT cannot change the TAM provision that carriers make a determination as to whether a communicable disease poses a direct threat to the health or safety of others. This requirement is set forth in section 382.51(b)(3) and it would not be appropriate for DOT to change or modify an existing requirement set forth in part 382 through the TAM. The TAM is the appropriate vehicle to clarify or explain the requirements in part 382 to ensure their proper implementation but is not the appropriate place to add, reduce, or change carriers' obligations. Requests for change to carriers' current obligations regarding communicable diseases would be more appropriate for consideration in a rulemaking process.

With regard to the attendant issue, DOT disagrees with the commenter and interprets section 382.35 to require a carrier to cover the cost of transportation for a safety attendant who is required by a carrier over the objection of a passenger with a disability. Carriers are required not to charge for the transportation of a safety assistant (including providing a refund

to a ticketed passenger who serves as a safety assistant) where a carrier's assessment that such assistance is needed is contrary to a disabled individual's self-assessment. According to the rule, the attitude of the safety assistant (*i.e.*, willingness to volunteer for free) does not matter. The free-transportation provision for safety attendants is not new and has been required of carriers since 1990. Of course, the carrier may select the most cost-effective manner to comply with the requirement whether that means selecting its own personnel or a non-revenue passenger to serve as a safety attendant or soliciting volunteer passengers in exchange for a free one-way ticket.

5. Chapter 5: Assisting Air Travelers With Disabilities Boarding, Deplaning, and During the Flight

Delta recommended that, in the section that addresses the stowage and treatment of personal equipment used by passengers with a disability, DOT include specific citations to the applicable FAA safety regulations and DOT hazardous materials regulations that govern items that can and cannot be brought aboard aircraft, e.g., ventilators/respirators, non-spillable batteries.

Mexicana believes that the language in the TAM regarding assisting passengers with the use of on-board wheelchairs inaccurately states that the carrier has the responsibility to transfer a disabled passenger from his or her seat to the aisle chair to enable him/her to move to and from the lavatory. Mexicana requested that DOT include language in the TAM that states that lifting and carrying a passenger with a mobility impairment from his/her seat to an aisle chair is not required to comply with section 382.39(b)(3). The carrier argued that requiring the lifting or carrying of a passenger to the aisle chair from his/her seat could lead to serious injury to carrier personnel and/or the passenger.

DOT Response: DOT is not convinced that it would be useful to provide specific citations to FAA safety and DOT hazardous materials regulations with respect to items that can and cannot be brought aboard aircraft because the TAM would need to be amended each time that there is a change in the FAA safety or DOT hazardous materials regulations. Also, carriers may unduly rely on the citations provided in the TAM and not keep up to date on changes in the FAA safety or DOT hazardous materials regulations that may occur over time.

DOT declines to make changes to the language in the TAM regarding assisting

passengers with the use of on-board wheelchairs as it accurately describes the requirement in section 382.39(b)(3). Although section 382.39(b)(3) does not explicitly state that assisting a passenger with the use of an on-board wheelchair includes transferring the passenger from his/her seat to the aisle chair, the preamble of the originally issued part 382, dated March 6, 1990, does make this point clearly. 55 FR 8008. The preamble to the 1990 rule contains a detailed discussion on required carrier personnel assistance to persons using on-board chairs. It addresses comments from air carrier associations, similar to the one made by the commenter on the TAM, that carrier personnel should not be required to assist with the use of an on-board wheelchair because of risks of injury. DOT decided, in 1990, that an on-board chair is not a device in which an individual with a disability can be independently mobile and carrier personnel must assist a disabled passenger not only by pushing him/her in an on-board chair but also by lifting the passenger onto the on board aisle chair when necessary.

6. Appendix III: Frequently Asked Questions

ATA commented that the draft TAM is inaccurate and misleading when it states that section 382.39 requires carriers (i) to provide wheelchair enplaning help, on request, from the curb to the airplane on departure, and from the airplane back out to the curb upon arrival; and (ii) to assist a disabled passenger in claiming his or her checked luggage before assisting him/her in a wheelchair to the curb if requested. ATA noted that these details are not addressed in the current part 382 and are the subject of the November 4, 2004, NPRM proposing to revise part 382 to update, reorganize and clarify the rule and to implement a statutory requirement to cover foreign air carriers under the ACAA.

DOT Response: DOT disagrees with the commenter and views section 382.39 as requiring enplaning assistance from the curb at the entrance to the terminal to the aircraft and deplaning assistance from the aircraft to the curb at the exit of the terminal when requested by a disabled passenger. This is not a new DOT interpretation. Also, DOT believes that implicit in the requirement to provide enplaning, deplaning and connecting assistance is the obligation of carriers to assist passengers with disabilities with carry-on or gate-checked luggage as they go between connecting flights or between a terminal entrance and a gate. DOT acknowledges that these details are

covered in the November 4, 2004, NPRM as ATA pointed out; however, the NPRM is making a clarification of an existing requirement and not proposing to establish a new rule. Indeed, the 2004 NPRM explains that it is stating the obligation explicitly to avoid any misunderstanding.

Discussion of Changes to TAM Unrelated to Public Comments Received

DOT has made several clarifying changes to the technical assistance manual proposed on April 20, 2005, that are not based on public comment. The changes consist primarily of the following: (1) Clarifying in the example provided in Chapter 2 regarding Adam (a passenger who has had severe epileptic seizures in the past) that airline personnel must reasonably believe that there is a real safety risk to him or a *direct threat* to other passengers to lawfully deny transport to him; (2) explaining in the example provided in Chapter 3 under communicable diseases of a passenger who appears to have chicken pox that airline personnel should make a determination as to whether the passenger poses a direct threat to the health or safety of others based on the seriousness of the health risk and the ease of disease transmittal; and (3) suggesting in Chapter 6 that whenever a passenger raises a disability-related concern that carrier personnel should advise the passenger of the existence of the Department's aviation consumer disability hotline for resolving issues related to disability accommodations. DOT believes that these changes to the TAM will make it a more useful document.

Issued this 8th day of July, 2005, at Washington DC.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation.

What Airline Employees, Airline Contractors, and Air Travelers With Disabilities Need To Know About Access to Air Travel for Persons With Disabilities

A Guide to the Air Carrier Access Act (ACAA) and Its Implementing Regulations, 14 CFR Part 382 (Part 382)

Table of Contents

Chapter 1: Understanding How To Use This Manual

- A. Introduction
- B. Background
- C. Keyword Definitions

Chapter 2: Learning the Basics About the Law Protecting Air Travelers With Disabilities

Chapter 3: Assisting Air Travelers With Disabilities Planning a Trip

- A. Advance Notice
- B. Information about the Aircraft
- C. Mobility Aids and Assistive Devices
- D. Service Animals
- E. Accommodations for Air Travelers who are Deaf, Hard of Hearing, or Deaf-Blind
- F. Communicable Diseases
- G. Medical Certificates: When are they Allowed?
- H. Your Obligation to Provide Services and Equipment
- I. Attendants

Chapter 4: Assisting Air Travelers With Disabilities at the Airport

- A. Accessibility of Terminal Facilities and Services
- B. Security Screenings for Air Travelers with a Disability
- C. Air Travelers with a Disability Changing Planes
- D. Accommodations for Air Travelers who are Deaf, Hard of Hearing, or Deaf-Blind
- E. Attendants

Chapter 5: Assisting Air Travelers With Disabilities Boarding, Deplaning, and During the Flight

- A. Aircraft Accessibility
- B. Seating Assignments and Accommodations
- C. Boarding and Deplaning Assistance
- D. Stowing and Treatment of Personal Equipment
- E. Services in the Cabin
- F. Safety Briefings

Chapter 6: Assisting Air Travelers With Disabilities With Their Complaints

- A. Complaint Procedures and Complaints Resolution Officials (CRO's)
- B. Process to Resolve Complaints
- C. General Complaint Resolution Tips
- D. Recording, Categorizing, and Reporting Written Disability-related Complaints Received by Carriers

Chapter 7: Interacting With People With Disabilities

Indices

Alphabetical Index
Part 382 Index

Appendices

- I. Tips for Air Travelers With Disabilities
- II. Airline Management-Related Issues
- III. Frequently Asked Questions
- IV. Recent DOT Enforcement Orders Related to the ACAA
- V. 14 CFR Part 382
- VI. DOT Guidance Concerning Service Animals in Air Transportation

Chapter 1: Understanding How To Use This Manual

- A. Introduction
- B. Background
- C. Keyword Definitions

A. Introduction

Purpose of the Manual

This manual is a guide to the Air Carrier Access Act (ACAA) and its implementing regulations, 14 CFR part 382 (part 382). It is designed to serve as a brief but authoritative source of information about the services, facilities, and accommodations required by the ACAA and the provisions of part 382. The manual does not expand air carriers' legal obligations or establish new requirements under the law. It contains suggested practices and procedures for carriers to use on a voluntary basis to implement part 382.

The primary purpose of the manual is to help you, employees/contractors of air carriers and employees/contractors of indirect air carriers that provide services or facilities to passengers with disabilities, to assist those passengers in accordance with the law. Knowing your legal responsibilities will help ensure consistent compliance with the law and protect the civil rights of air travelers with disabilities when providing services, facilities, and accommodations to them.

Throughout the manual, rather than talking about air carriers' or indirect air carriers' employees/contractors such as yourself in the third person, the word "you" is used. In most instances, the word "you" refers to personnel who deal directly with the traveling public. Moreover, the obligations and responsibilities under the law as set forth in the manual must be read within the context of each specific employee's duties on the job.

A second purpose of this manual is to offer air travelers with disabilities information about their rights under the ACAA and the provisions of part 382. Accordingly, in addition to the other useful information in this manual, Appendix I contains a list of "Tips for Air Travelers with Disabilities" to help ensure a smooth and comfortable trip. In addition, Appendix III provides a list of "Frequently Asked Questions" and answers and Appendix IV contains a list of "Recent DOT Enforcement Orders Related to the ACAA." These DOT enforcement orders are useful because they provide examples in which DOT has interpreted some of the provisions of the ACAA and part 382 under particular circumstances.

B. Background

U.S. Air Carriers

In 1986, Congress passed the ACAA, which prohibits discrimination by U.S. air carriers against qualified individuals with disabilities. 49 U.S.C. 41705. In

1990, the Department of Transportation (DOT) issued part 382, the regulations defining the rights of passengers with disabilities and the obligations of U.S. air carriers under the ACAA. Since then, these regulations have been amended a number of times. DOT has also issued guidance to air carriers on the ACAA and part 382 in a variety of ways: preambles to regulatory amendments, industry letters, correspondence with individual carriers or complainants, enforcement actions, Web site postings, and informal conversations with the public and air carriers.

Foreign Air Carriers

On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR-21"; Pub. L. 106-181) amended the ACAA to cover foreign air carriers. Although a final rule modifying part 382 to cover foreign air carriers has not yet been issued, in May 2000 DOT's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) issued a notice informing the public of its intent to use the provisions of part 382 as guidance in investigating any complaints of non-compliance with the ACAA by foreign carriers. In addition, in July 2003 DOT amended part 382 by adding a new section, 382.70, that requires both U.S. carriers and foreign carriers to record and report to DOT on written disability-related complaints that they receive. At the present time, section 382.70 is the only provision of part 382 that specifically states that it applies to foreign carriers. Finally, a notice of proposed rulemaking (NPRM) proposing to extend the other provisions of part 382 to foreign carriers was published on November 4, 2004. Therefore, while the majority of this manual does not expressly apply to foreign carriers, they should look to this document and part 382 in satisfying their general nondiscrimination obligations under AIR-21 and DOT's May 2000 guidance.

Development of Technical Assistance Manual

In 2000, Congress required DOT to create a technical assistance manual to provide guidance to individuals and entities with rights or responsibilities under the ACAA. This manual responds to that mandate. In creating this manual, DOT held meetings with representatives from the disability community, air carriers, and organizations that contract with air carriers to provide disability-related services. Those who attended the meetings made suggestions for this manual. All of these suggestions have

been thoroughly considered by DOT and incorporated where appropriate.

ACCESS

A step-by-step process for resolving issues involving passengers with disabilities appears later in this manual. Whether the issue is a matter of law, customer service, or both, the ACCESS checklist will be useful in identifying the needs of passengers with disabilities and determining what accommodations the air carriers are required to provide as a matter of law. See Chapter 6, section B.

How To Use This Manual

This manual is structured in the same sequence as the steps a passenger would encounter on a trip, *i.e.*, requirements concerning

- Planning a flight,
- The airport experience,
- Enplaning, deplaning, and making connections,
- Services during a flight, and
- Responding to disability-related complaints.

This manual contains the following tools to assist you in quickly and easily finding the answer to your questions:

- A Table of Contents at the beginning of the manual;
- An Alphabetical Index at the back of the manual; and
- A part 382 Index listing the citations to part 382 at the back of the manual.

Also, the following appendices appear at the end of the manual:

- *Appendix I:* "Tips for Air Travelers with Disabilities" as they relate to the most commonly-used accommodations, facilities, and services that carriers are required to make available to such passengers;
- *Appendix II:* A list of concerns applicable mainly to air carrier management, as opposed to frontline customer service personnel;
- *Appendix III:* A list of "Frequently Asked Questions" and answers;
- *Appendix IV:* A list of "Recent DOT Enforcement Orders Related to the ACAA";
- *Appendix V:* The full text of part 382; and
- *Appendix VI:* The DOT document "Guidance Concerning Service Animals in Air Transportation."

Themes of This Manual

Legal Requirements and Customer Service

This manual highlights the difference between actions you must take according to the law as stated in part 382 and actions that you may choose to

take in an effort to provide superior customer service to passengers with disabilities. Legal requirements are generally designated by the words, "must" or "shall" in the manual. Words such as "should" or "may" indicate accommodations that part 382 does not require but that DOT recommends and that you may decide to provide as a matter of good customer service.

Safety

Where applicable, this manual discusses how to properly and lawfully consider aircraft and passenger safety when providing transportation to passengers with disabilities. Part 382 does not require or authorize you to disregard FAA safety regulations. Where different treatment of passengers with disabilities or other restrictions are mandated by an FAA safety regulation, part 382 allows you to comply with the FAA safety regulation. For example, if an FAA safety rule provides that only persons who can perform certain functions can sit in an exit row, then you can request that an individual unable to perform those functions (regardless of whether that individual has a disability) sit in another row. If the passenger refuses, you can properly deny transportation to such passengers.

However, where an optional carrier action that is not required by FAA rules would result in different treatment of passengers with disabilities, or in other restrictions, then the ACAA and the provisions of part 382 prohibit you from implementing the optional carrier action even if it might ensure safety. For instance, suppose ABC Airways required only passengers with disabilities—not all passengers—to provide correct answers to a quiz about the content of a safety briefing and a passenger with a disability either refused to respond or failed such a quiz. It would *not* be appropriate to deny transportation to a passenger with a disability on such grounds unless the carrier's policies and procedures consistently treated all passengers in a similar manner.

In short, part 382 is consistent with FAA safety requirements as it allows you to follow FAA safety rules and to ensure that the safe completion of the flight or the health and safety of other passengers are not jeopardized. Determinations about whether an FAA rule requires different treatment of a passenger with a disability for safety reasons often depend on the circumstances you encounter. Therefore, it is important that you seek information from passengers with disabilities and their traveling companions and make a reasonable

judgment considering all available information.

The FAA safety mandates can be found in the Code of Federal Regulations (14 CFR parts 60 through 139), FAA guidance interpreting these regulations, and Airworthiness Directives (see <http://www.faa.gov>, click on "Aircraft Guidance" and then click on "Airworthiness Directives").

Security

This manual addresses security procedures, particularly those enacted after the terrorist hijackings and tragic events of September 11, 2001, which affect or may affect the types of accommodations and services provided to passengers with disabilities. Similar to the situation involving FAA safety requirements, part 382 is consistent with security requirements mandated by the Transportation Security Administration (TSA). For example, TSA has strict rules as to which persons can go beyond the screener checkpoints, but these TSA rules are consistent with part 382 and do not invalidate your obligation to provide enplaning and deplaning assistance requested by passengers with disabilities, including assistance beyond screener checkpoints. You do have discretion in how that assistance is provided. You can provide (i) a "pass" allowing an individual who needs to assist a passenger with a disability to go through the screener checkpoint without a ticket; (ii) assistance directly to the passenger; or (iii) both.

Contractors

This manual recognizes the important role that contractors play in providing services, equipment, and other accommodations to passengers with disabilities. A contractor is an entity that has a business arrangement with an air carrier to perform functions that the ACAA and part 382 would otherwise require the air carrier to perform with its own employees. Contractors provide a variety of services on behalf of air carriers in furnishing assistance to persons with disabilities. For example, contractors often provide wheelchair service, assist passengers with disabilities on and off aircraft, transport passengers with disabilities between departure gates, and work as baggage handlers who handle passengers' wheelchairs and other assistive devices. Contractors must provide the same services, equipment, and other accommodations required of an air carrier and its employees by the ACAA and part 382. As an employee of a contractor, you are therefore required to follow the mandates of the ACAA and

part 382 when providing services, equipment, and other accommodations to passengers with disabilities. If you do not follow the mandates of the ACAA and part 382, the air carrier is subject to enforcement action by DOT for your failure.

C. Keyword Definitions

Following is a list of key words whose definitions will help you fully understand this manual.

Air Carrier: Any United States company that provides air transportation, either directly or indirectly or by a lease or any other arrangement. [Sec. 382.5]

Air Carrier Airport: A public, commercial service airport which enplanes annually 2,500 or more passengers and receives scheduled air service. [Sec. 382.5]

Air Transportation: Interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act (recodified as 49 U.S.C. 40101 *et seq.*). [Sec. 382.5]

Assistive Device: Any piece of equipment that assists a passenger with a disability in carrying out a major life activity. Assistive devices are those devices or equipment used to assist a passenger with a disability in caring for himself or herself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, or performing other functions of daily life. Assistive devices may include medical devices, medications, and bags or cases used to carry them.

Complaints Resolution Official (CRO): One or more individuals designated by each air carrier who must be thoroughly familiar with the requirements of part 382 and the air carrier's policies and procedures addressing part 382 and the provision of services, facilities, and accommodations to passengers with disabilities. A CRO must have the authority to resolve disability-related complaints on behalf of an air carrier. A CRO must be available to address disability-related complaints presented by passengers or other individuals. A CRO must be available [1] in person at the airport; or [2] via telephone or TTY at all times an air carrier is operating. [Sec. 382.65]

Contractor: A contractor is an entity that has a business arrangement with an air carrier to perform functions that the air carrier would otherwise be required to perform with its own employees under the ACAA and part 382. For example, carriers often have business arrangements with companies to provide wheelchair service to

passengers with disabilities or to handle baggage. [Sec. 382.7]

Contractor Employee: An individual that works for an organization that has a business arrangement with one or more air carriers to provide services, facilities, and other accommodations to passengers with disabilities. [Sec. 382.7]

Department or DOT or U.S.

Department of Transportation: The Federal agency that works to ensure a fast, safe, efficient, accessible, and convenient transportation system that meets the Nation's vital national interests and enhances the quality of life of the American people. DOT has nine operating administrations, in addition to the Office of the Secretary of Transportation (OST): Bureau of Transportation Statistics, Federal Aviation Administration (FAA), Federal Highways Administration, Federal Railroad Administration, Federal Transit Administration, Maritime Administration, National Highway Transportation Safety Administration, Research and Special Programs Administration, and the St. Lawrence Seaway Development Corporation. [Sec. 382.5] The responsibility for implementing the ACAA resides in OST.

DOT Disability Hotline or Hotline: The toll free telephone hotline system that provides general information about the rights of air travelers with disabilities, responds to requests for information, and assists air travelers with time-sensitive disability-related issues. Members of the public may call 1-800-778-4838 (voice) or 1-800-455-9880 (TTY) from 7 a.m. to 11 p.m. Eastern time, seven days a week to receive assistance regarding air travel by individuals with disabilities.

FAA: The Federal administration that oversees the safety of our Nation's civil aviation system. Safety is the first and foremost mission of the FAA and includes the issuance and enforcement of regulations and standards related to the manufacture, operation, certification, and maintenance of aircraft. [Sec. 382.5]

Facility: All or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport, to the extent that the carrier exercises control over the selection, design, construction, or alteration of the property. [Sec. 382.5]

Indirect Air Carrier: A company not directly involved in the operation of an aircraft that sells air transportation services to the general public, such as tour and charter operators. [Sec. 382.5]

Individual with a Disability: Any individual who:

- Has a physical or mental impairment that, on a permanent or temporary basis,
- Substantially limits one or more major life activities,
- Has a record of such an impairment, or
- Is regarded as having such an impairment. [Sec. 382.5]

Qualified Individual with a Disability: An individual with a disability who:

- Accompanies or meets a traveler using airport facilities;
- Seeks information about schedules, fares, or policies;
- Attempts to use facilities or services offered to the general public by an air carrier;
- Has a ticket, or makes a good faith attempt to buy a valid ticket for a flight;
- Arrives with a valid ticket for the flight; and
- Meets reasonable,

nondiscriminatory requirements applicable to all passengers. [Sec. 382.5]

Service Animal: Any animal that is individually trained or able to provide assistance to a qualified person with a disability or any animal shown by documentation to be necessary for the emotional well being of a passenger. With respect to emotional support animals, although carriers may require documentation to verify that an animal is an emotional support animal, such documentation is not required under the law.

Dogs, cats, and monkeys are among those that have been individually trained and act as service animals. Service animals may assist people with disabilities by, for example:

- Guiding persons with vision impairments;
- Alerting persons with deafness to specific sounds;
- Alerting persons with epilepsy of imminent seizure onset;
- Pulling a wheelchair;
- Assisting persons with mobility impairments with balance; and
- Providing emotional support for persons with disabilities. [Sec. 382.55]

Text Telephones (TTY) or Telecommunications Devices for the Deaf (TDD): TTYs, also called TDDs, are devices that allow individuals who are unable to use a regular telephone to make or receive telephone calls by enabling them to type their conversations. The TTY benefits people who are deaf, hard of hearing, or speech impaired and individuals seeking to communicate with them. The conversation is typed back and forth and is displayed on a lighted display screen, a paper print-out in the TTY/

TDD device, or a computer screen using specialized TTY software. A TTY may also be used to place a relay call to a party with a regular telephone. *See* Chapter 4, Section D.

Transportation Security Administration (TSA): An administration within the Department of Homeland Security that is charged with protecting the security of the Nation's transportation systems to ensure freedom of movement for people and commerce. The Aviation and Transportation Security Act, signed into law on November 19, 2001, brought airport security (including the responsibility to hire, train, manage, and discipline security screeners) under the direct authority of the TSA.

Chapter 2: Learning the Basics About the Law Protecting Air Travelers With Disabilities

• *What does the Air Carrier Access Act (ACAA) say?* The ACAA prohibits U.S. and foreign air carriers from discriminating against an air traveler with a disability on the basis of such disability (49 U.S.C. 41705).

• *What is 14 CFR Part 382 (part 382)?* Part 382 is a detailed set of rules that define air carriers' responsibilities under the ACAA and ensures that individuals with disabilities will be treated without discrimination consistent with the safe carriage of all passengers.

• *Who has to follow part 382?* The following organizations and individuals must comply with part 382: (1) Air carriers and their employees (e.g., ticket and gate agents, flight attendants, baggage handlers, pilots, etc.); (2) authorized agents of an air carrier (e.g., travel agents); (3) organizations and their employees that have business arrangements with air carriers to provide disability-related services (e.g., wheelchair service, baggage handling, etc.); and (4) indirect air carriers and their employees (e.g., tour operators) that provide facilities, services, or other accommodations to passengers with disabilities.

• *Who is protected by part 382?* Part 382 protects three categories of individuals with disabilities: (1) Individuals who have a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities; (2) individuals who have a record of such impairment; and (3) individuals who are regarded as having such an impairment, whether they have the impairment or not.

• *What is a physical or mental impairment?*

Physical impairments include (1) physiological disorders or conditions; (2) cosmetic disfigurements; or (3) anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine.

Examples of physical impairments include orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease, drug addition, and alcoholism.

Mental impairments include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Physical characteristics such as the color of one's eyes, hair, or skin, baldness, and left-handedness do not constitute physical impairments. Similarly, neither age nor obesity alone constitutes a physical impairment. Disadvantages due to cultural or economic factors are not covered by part 382. Moreover, the definition of "physical or mental impairment" does not include personality traits such as poor judgment or a quick temper, where these are not symptoms of a mental or psychological disorder.

• *What is a substantial limitation on major life activities?* To qualify as a "disability" under part 382 a condition or disease must substantially limit a major life activity. Major life activities include, but are not limited to, activities such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

• *When does an impairment "substantially limit" a major life activity?* There is no absolute standard for determining when an impairment is a substantial limitation. Some impairments obviously limit the ability of an individual to engage in a major life activity.

Example 1: A person who is deaf is substantially limited in the major life activity of hearing.

Example 2: A person with traumatic brain injury may be substantially limited in the major life activities of: (a) caring for himself or herself; and (b) working, because of memory deficiency, confusion, contextual difficulties, and the inability to reason appropriately.

Example 3: An individual who is paraplegic may be substantially limited in the major life activity of walking.

• *Are temporary mental or physical impairments covered by part 382?* Yes.

Example: While on a skiing trip, Jane breaks her leg and is placed in a cast that keeps her from bending her leg and walking without the use of crutches. Jane will eventually recover the full use of her leg, but in the meantime she is substantially limited in the major life activity of walking. Because Jane's broken leg will substantially limit a major life activity for a time, Jane would be considered to have a disability covered by part 382 during that time. You would be required to provide her certain services and equipment under part 382 if requested (e.g., enplaning and deplaning assistance, connecting wheelchair assistance, seating with additional leg room in the same class of service to the extent required by part 382, safe stowage of her crutches in the aircraft cabin in close proximity to the passenger).

• *Who is a person with a "record of" a disability under part 382?* Part 382 protects individuals from discrimination who have a "record of" (history of) a physical or mental impairment that substantially limits a major life activity or who have been classified, or misclassified, as having such an impairment. Therefore, individuals who do not have an actual current impairment that substantially limits a major life activity would still be protected under part 382 based upon a past diagnosis (or a misdiagnosis) of an impairment that substantially limits a major life activity. Individuals with a history of cancer or epilepsy are examples of people with a record of impairment.

Example: Adam, a passenger who has had severe epileptic seizures in the past that rendered him unable to work, is denied transportation by airline personnel because of their concern that he may have a seizure on board the aircraft. This denial of transportation would be unlawful if based solely on the fact that Adam has had seizures in the past, because epilepsy may be controlled by medication. Airline personnel can lawfully deny transport to Adam only if they reasonably believe, based on the information available, that his seizure disorder poses a real safety risk to him or direct threat to other passengers.

• *When is a person "regarded as" having a disability?* Part 382 also protects an individual who is "regarded as" having a physical or mental impairment that substantially limits a major life activity, whether or not that person actually has an impairment. People can be "regarded as" disabled if: (1) Their non-limiting or slightly limiting impairments are viewed by others as substantially limiting; (2) they have no impairments but are viewed by others as having a substantially limiting impairment; or (3) their impairments become substantially limiting because of the attitudes of other people.

Example 1: John, an individual with a mild heart condition controlled by medication, is denied transportation because airline personnel believe that flying will cause John to have heart problems necessitating diversion of the aircraft during flight. John is not substantially limited in any major life activity by his condition. John has informed the air carrier personnel that his heart condition is controlled by medication and that for the past five years he has flown on a near weekly basis without incident. Even though John does not actually have an impairment that substantially limits a major life activity, he is protected by the provisions of part 382 because he is treated as though he does. The airline personnel's refusal to provide transportation to John must be reasonable under the facts and circumstances presented. Arguably, excluding John from the flight was unreasonable because John had informed the airline employee that he was taking medication and that he had flown frequently in the recent past without incident. The reasonableness of the decision depends on John's credibility and any additional information provided. Regardless of the reasonableness of the decision, the airline employee is legally required under section 382.31(e) to provide a written explanation to John within 10 calendar days setting forth the specific safety or other reason(s) for excluding John from the flight.

Example 2: Karen, an individual born with a prominent facial disfigurement, has been refused transportation on the grounds that her presence has upset several passengers who have complained to gate agents about her appearance. Karen's physical disfigurement becomes substantially limiting only as a result of the attitudes of others and she is protected by the provisions of part 382. Refusing to provide transportation to Karen would violate section 382.31 because you must not refuse to provide transportation to a qualified individual with a disability, such as Karen, solely because her appearance may offend or annoy other passengers. As in the example above, and regardless whether the decision to refuse transportation was correct, you must provide Karen with a written explanation of the specific basis for the refusal within 10 calendar days of the incident.

• *How do I determine whether a person is an individual with a disability?* Provide an opportunity for the passenger to self-identify by asking how you can best assist him or her.

• *How do I assist a passenger with a disability?* Ask the passenger how you can best assist him or her. A passenger with a disability has the most information about his or her abilities, limitations, level of familiarity with the airport and airline, and needs in connection with traveling by air.

• *May I ask an individual what his or her disability is?* Only to determine if a passenger is entitled to a particular seating accommodation pursuant to section 382.38. Generally, you may not make inquiries about an individual's disability or the nature or severity of the

disability. However, you may ask questions about an individual's ability to perform specific air travel-related functions, such as enplaning, deplaning, walking through the airport, etc.

Example 1: You may not ask a person, "What is your disability?" You may not ask, "Do you have diabetes?"

Example 2: You may ask, "Can you walk from the gate area to your aircraft seat?" You may ask, "Are you able to transfer from the aisle chair over a fixed aisle seat armrest?" You may ask, "Can you walk from this gate to your connecting gate?" You may ask (by writing a note if necessary), "Do you need me to notify you if I make any announcements over the public address speaker?"

Example 3: Susan asks for a bulkhead seat because the condition of her leg necessitates her need for greater legroom. You may ask, "Are you unable to bend your leg or is your leg fused or immobilized?" [Sec. 382.38]

• *What are some of the requirements of part 382 that you should be aware of?* Following are some of the principal requirements of part 382. It is important to note that the requirements of part 382 listed below are not meant to be exhaustive. Rather, it is a list of requirements governing situations that you are likely to encounter on a regular basis.

• You must not discriminate against qualified individuals with a disability. [Sec. 382.7(a)(1)] You must not *require* a passenger with a disability to accept special services (including, but not limited to, pre-boarding) not requested by the passenger. [Sec. 382.7(a)(2)] Instead, you may *ask* a passenger with a disability if he or she would like a particular service, facility, or other accommodation. In addition, you must not exclude a qualified individual with a disability from or deny the individual the benefit of any air transportation or related services that are available to other passengers. [Sec. 382.7(a)(3)] For example, if you choose to provide ground transportation and overnight accommodations to passengers because of a flight cancellation, you must ensure that the ground transportation to the hotel, and the hotel itself, are accessible to a passenger with a disability.

• You must not refuse transportation to a passenger solely on the basis of a disability. [Sec. 382.31(a)]

• You must provide transportation to an individual with a disability who has an impairment that affects his or her appearance or results in involuntary behavior except under limited circumstances specified below. You must provide transportation to such individuals with disabilities even if the disability may offend, annoy, or inconvenience crewmembers or other passengers. [Sec. 382.31(b)] However, if the person's disability results in

involuntary behavior that would or might be inimical to the safety of the flight, then the person may properly be refused transportation. [Sec. 382.31(d)]

- You shall not limit the number of individuals with disabilities on a particular flight. [Sec. 382.31(c)]

- If transportation of a passenger with a disability would endanger the safety of the aircraft or the health or safety of its passengers or violate an FAA safety regulation, you may refuse transportation to the individual with a disability. [Sec. 382.31(d)]

- You shall not require a passenger with a disability to travel with an attendant or to present a medical certificate, *except* in very limited circumstances. [Secs. 382.35(a) and 382.53(a)]

- You shall not exclude a passenger with a disability from any seat in an exit or other row solely on the basis of his or her disability except to comply with FAA safety rules. FAA safety rules establish criteria that must be met in order for a passenger to occupy a seat in the emergency exit rows. [14 CFR 121.585] If a passenger with a disability meets these FAA criteria, he or she must be allowed to sit in an emergency exit row. As with any other passenger, you must look at the individual passenger with a disability and reasonably assess whether he or she meets FAA criteria for exit-row seating. [Sec. 382.37(a)]

- You must provide timely enplaning, deplaning, and connecting assistance to passengers with disabilities requesting such assistance. As part of this duty, you must provide equipment (e.g., wheelchairs, electric carts, and aisle chairs) and personnel (e.g., individuals to propel wheelchairs and aisle chairs and individuals to assist passengers with disabilities in carrying and stowing their baggage). [Secs. 382.39(a)(1) and 382.39(b)(5)]

- You must allow a passenger with a disability to stow his or her cane or other assistive device inside the cabin of the aircraft close to his or her seat if it fits, consistent with FAA safety rules on carry-on items. [Sec. 382.41(c)]

- You must allow passengers to safely stow their wheelchairs or parts of wheelchairs (e.g., wheels, seats, etc.) in the overhead bin or under seats. [Sec. 382.41(e)(1)]

- You must ensure that there is space for at least one passenger with a disability to stow a folding wheelchair in the cabin of the aircraft if the aircraft has a designed seating capacity of 100 or more seats and the aircraft was ordered after April 5, 1990, or delivered after April 5, 1992. [Sec. 382.21(a)(2)]

- If there is a closet or other approved stowage area for passengers' carry-on

items of sufficient size to accommodate a folding, collapsible, or break-down wheelchair, the carrier must designate priority stowage space for at least one wheelchair in that area. A passenger with a disability who takes advantage of the offer of the opportunity to pre-board may stow his or her wheelchair in this area with priority over other carry-on items brought onto the aircraft by other passengers and flight crew enplaning at the same airport. A passenger with a disability who does not pre-board may use this space to stow his or her wheelchair on a first-come, first-served basis along with other passengers stowing their carry-on items. [Sec. 382.41(e)(2)]

- You must have a copy of Part 382 available at every airport you serve. Upon request by a passenger at the airport, you must make a copy available for review. [Sec. 382.45(d)]

- You must provide blind or visually-impaired passengers and passengers who are deaf, hard of hearing, or deaf-blind, timely access to the same information given to other passengers at the airport or on the airplane. This includes, but is not limited to, information concerning gate assignments, delayed flights, and safety. [Secs. 382.45(c) and 382.47]

- You must allow service animals to accompany passengers with disabilities in the cabin consistent with FAA safety requirements. You must allow the service animal to sit in close proximity to its user, as long as the service animal does not block the aisle or other emergency evacuation route in violation of FAA safety regulations. Often this will mean that the service animal will sit under the seat in front of the disabled passenger to avoid obstructing an aisle or other space. Some service animals are held by their users in their arms as an adult would hold a human infant (limited to infants under two years of age) of roughly the same size. [Sec. 382.55]

- You must make available a Complaints Resolution Official (CRO) at the airport—in person or by telephone or TTY—to address disability-related complaints that arise during the travel process at all times when your flights are operating at that airport. You must provide a CRO to a passenger even if the passenger does not use the term "Complaints Resolution Official" or "CRO." When a passenger with a disability uses words such as "supervisor," "manager," "boss," or "disability expert" in connection with resolving a disability-related issue, you must provide a CRO. [Sec. 382.65]

- You must not charge for services that are required by part 382. This

means, for example, you must not ask for a tip when providing wheelchair service to a passenger. You may, however, impose a reasonable charge for services *not* required by part 382, *i.e.*, optional services. Examples of such optional services include medical oxygen for use on board an aircraft or stretcher service. [Sec. 382.57]

- *When am I required to provide disability-related accommodations to an individual?* You are required to provide such an accommodation when: (1) an individual with a disability or someone acting on his or her behalf, such as a travel companion, family member, or friend, requests an accommodation required by part 382; or (2) you offer such a required accommodation to a passenger with a disability and he or she accepts such accommodation.

Chapter 3: Assisting Air Travelers With Disabilities Planning a Trip

- A. Advance Notice.
- B. Information about the Aircraft.
- C. Mobility Aids and Assistive Devices.
- D. Service Animals.
- E. Accommodations for Air Travelers who are Deaf, Hard of Hearing, or Deaf-Blind.
- F. Communicable Diseases.
- G. Medical Certificates: When are They Allowed?
- H. Your Obligation to Provide Services and Equipment.
- I. Attendants.

A. Advance Notice

You cannot require passengers with disabilities to provide advance notice of their intention to travel or of their disability except as provided below. [Sec. 382.33(a)]

Advance Notice Only for Particular Services and Equipment

You may require up to 48 hours' advance notice and one hour's advance check-in from a passenger with a disability who wishes to receive the following services:

- Transportation for a battery-powered wheelchair on an aircraft with fewer than 60 seats;
- Provision by the carrier of hazardous materials packaging for the battery of a wheelchair or other assistive device;
- Accommodations for 10 or more passengers with disabilities who travel as a group; and
- Provision of an on-board wheelchair on an aircraft that does not have an accessible lavatory for passengers with disabilities who can use an inaccessible lavatory but need an on-board chair to do so. [Secs. 382.33(b)(5)–(8)]

Example: While making his reservation, a passenger with a disability gave the

reservation agent 48 hours' advance notice that he would need an aisle chair to access the lavatory on his upcoming flight. The flight is on an aircraft with more than 60 seats and it does not have an accessible lavatory. During the call, the passenger is made aware of the fact that the lavatory is inaccessible, but explains that he can use an inaccessible lavatory as long as he has access to a carrier-provided aisle chair. Because the passenger has complied with the advance notice requirement here, normally this information would have been entered into the passenger's reservation record (otherwise known as the passenger name record (PNR)) by the carrier and the request for an aisle chair would have been handled through that notification process. You are a new gate agent for your carrier and when this passenger approaches you at the gate more than an hour before the scheduled departure time of the flight and asks about the aisle chair, you are not sure how to reply. What should you do?

To begin, as a matter of good customer service, you should tell the passenger that you are not sure but you will find out for him. You should ask a colleague and, if necessary, contact a CRO. When you ask your colleague, you are told that all aircraft with more than 60 seats in your carrier's fleet maintain an in-cabin aisle chair. Once you receive this information you should assure the passenger that an aisle chair is available so he can use the inaccessible lavatory on the aircraft.

Advance Notice for Optional Services and Equipment

Although carriers are not required to provide the following services or equipment, if they choose to provide them, you may require 48 hours' advance notice and one hour's advance check-in for:

- Medical oxygen for use on board the aircraft;
- Carriage of an incubator;
- Hook-up for a respirator to the aircraft's electrical power supply; and
- Accommodation for a passenger who must travel on a stretcher. [Secs. 382.33(b)(1)–(4)]

If appropriate advance notice has been given and the requested service is available on that particular flight, you must ensure that the service or equipment is provided.

Make a Reasonable Effort To Accommodate, Even Without Advance Notice

In addition, even if a passenger with a disability does *not* meet the advance notice or check-in requirement, you must make a reasonable effort to furnish the requested service or equipment, provided that making such accommodation would not delay the flight. [Secs. 382.33(c) and (e)]

Example 1: Mr. Thomas uses a battery-powered wheelchair. He travels frequently between Washington, DC, and New York for

business. One day, he finds out that he has an important business meeting in New York and must travel up to New York that afternoon. He has no time to provide advance notice regarding the transportation of his battery-powered wheelchair and arrives at the gate 45 minutes before his flight is scheduled to depart. The aircraft for the flight has fewer than 60 passenger seats. What should you do?

Carriers may require 48 hours' advance notice and one-hour advance check-in for transportation of a battery-powered wheelchair on a flight scheduled to be made on an aircraft with fewer than 60 seats. Carriers may require the same advance notice for provision of hazardous materials packaging for a battery. However, airline personnel are required to make reasonable efforts to accommodate a passenger who fails to provide the requisite notice to the extent it would not delay the flight. Therefore, you must make a reasonable effort to accommodate Mr. Thomas as long as it would not delay the flight.

Mr. Thomas is a frequent traveler on this particular route and he knows that usually it is feasible to load, store, secure, and unload his battery-powered wheelchair and spillable battery in an upright position [Sec. 382.41(g)(2)] or detach, "box", and store the spillable battery [Sec. 382.41(g)(3)] within about 20–25 minutes. If this is the case, you must accommodate Mr. Thomas, his battery-powered wheelchair, and the spillable battery even though Mr. Thomas did not provide advance notice, since doing so would not delay the flight.

Example 2: Ms. Webster must travel with medical oxygen and shows up at the airport without providing advance notice of her need for medical oxygen. As a policy, your carrier does not provide medical oxygen on any flights. What should you do?

To begin, you should confirm that your carrier does not provide the optional service of medical oxygen for use on board a flight. If no medical oxygen service is available on your carrier, you should explain this to Ms. Webster and tell her that the carrier cannot accommodate her.

As a matter of customer service, you may direct Ms. Webster to another carrier that does provide medical oxygen service in that market. The passenger should be aware, however, that the provision of medical oxygen involves coordination with the passenger's physician to determine the flow rate and the amount of oxygen needed and arranging for the delivery of the oxygen by the carrier to the point of origin of the passenger's trip. Therefore, normally, it is not possible to accommodate a passenger who needs medical oxygen on a flight unless the advance notice is provided because the accommodation cannot be made without delaying the flight.

If Aircraft Is Substituted, Make an Effort To Accommodate

Even if a passenger with a disability provides advance notice, sometimes weather or mechanical problems require cancellation of the flight altogether or the substitution of another aircraft.

Under these circumstances, you must, to the maximum extent feasible, assist in providing the accommodation originally requested by the passenger with a disability. [Sec. 382.33(f)]

B. Information About the Aircraft

You should be familiar with and be able to provide information about aircraft accessibility for passengers with a disability when they request this information. [Secs. 382.21 and 382.45] When feasible, you should provide information pertaining to a specific aircraft to be used for a specific flight. In general, you must take into account safety and feasibility when seating passengers with disabilities. [Secs. 382.37(a) and 382.38(j)]

If requested, you should be able to provide information on the following:

- Any limitations concerning the ability of the aircraft to accommodate an individual with a disability;
- The location of seats, if any, in a row with a movable aisle armrest and any seats which the carrier does not make available to individuals with a disability (e.g., exit rows);
- Any limitation on the availability of storage facilities in the cabin or in the cargo bay for mobility aids or other equipment commonly used by an individual with a disability; and
- Whether the aircraft has a lavatory accessible to passengers with a disability.

C. Mobility Aids and Assistive Devices

If, in assisting a passenger with a disability, a carrier employee or contractor takes apart the passenger's mobility aid or assistive device (e.g., a wheelchair), another carrier employee or contractor must reassemble it and ensure its prompt return to the passenger with a disability in the same condition in which the carrier received it. [Secs. 382.43(a) and (b)] You must permit passengers with a disability to provide written instructions concerning the disassembly and reassembly of their wheelchairs. [Sec. 382.41(h)] You cannot require passengers with disabilities to sign a waiver of liability for damage to or loss of wheelchairs or other assistive devices. [Sec. 382.43(c)] However, you may note preexisting damage to wheelchairs or other assistive devices.

D. Service Animals¹

A service animal is (i) an animal individually trained and which performs functions to assist a person with a disability; (ii) an animal that has been shown to have the innate ability to

¹ See also Appendix VI.

assist a person with a disability, *e.g.*, a seizure alert animal; or (iii) an emotional support animal. You should be aware that there are many different types of service animals that perform a range of tasks for individuals with a disability.

Service Animal Permitted To Accompany Passenger on Flight and at Seat Assignment

You must permit dogs and other service animals used by passengers with a disability to accompany the passengers on their flights. In addition, you must permit a dog or other service animal to accompany a passenger with a disability to the passenger's assigned seat and remain there as long as the animal does not obstruct the aisle or other areas that must remain unobstructed for safety reasons. [Sec. 382.55(a)] The service animal must be allowed to accompany the passenger unless it poses a direct threat to the health or safety of others or presents a significant threat of disruption to the airline service in the cabin. *See also* Appendix VI, DOT Guidance Concerning Service Animals in Air Transportation; FAA Flight Standards Information Bulletin for Air Transportation (FSAT) #04-01A, "Location and Placement of Service Animals on Aircraft Engaged in Public Air Transportation" <http://www.faa.gov/avr/afs/fsat/fsatl.htm>.

If Service Animal Cannot Be Accommodated at Assigned Seat

If a service animal cannot be accommodated at the seat of the passenger with a disability and if there is another seat in the same class of service where the passenger and the animal can be accommodated, you must offer the passenger the opportunity to move to the other seat with the service animal. Switching seats in the same class of service must be explored as an alternative before requiring that the service animal travel in the cargo compartment. [Sec. 382.37(c)]

Verification of Service Animals

Under particular circumstances, you may see a need to verify whether an animal accompanying a passenger with a disability qualifies as a service animal under the law. You must accept the following as evidence that the animal is indeed a service animal:

- The credible verbal assurances of a passenger with a disability using the animal,
- The presence of harnesses or markings on harnesses,
- Tags, or

- Identification cards or other written documentation. [Sec. 382.55(a)(1)]

Keep in mind that passengers accompanied by service animals may not have identification or written documentation regarding their service animals. *See also* Appendix VI, DOT Guidance Concerning Service Animals in Air Transportation.

Carriers may require that passengers traveling with *emotional support animals* present current documentation (*i.e.*, dated within a year of the date of travel) from a mental-health professional stating that:

- The passenger has a mental health-related disability;
- The passenger needs the animal for the mental-health condition; and
- The provider of the letter is a licensed mental-health professional (or a medical doctor) and the passenger is under the individual's professional care.

Even if you receive sufficient verification that an animal accompanying a passenger is indeed a service animal, if the service animal's behavior in a public setting is inappropriate or disruptive to other passengers or carrier personnel, you may refuse to permit the animal on the flight and offer the passenger alternative accommodations in accordance with part 382 and your carrier's policy (*e.g.*, accept the animal for carriage in the cargo hold).

Example 1: A passenger arrives at the gate accompanied by a pot-bellied pig. She claims that the pot-bellied pig is her service animal. What should you do?

While generally speaking, you must permit a passenger with a disability to be accompanied by a service animal, if you have a reasonable basis for questioning whether the animal is a service animal, you may ask for some verification. Usually no written verification is required.

You may begin by asking questions about the service animal, *e.g.*, "What tasks or functions does your animal perform for you?" or "What has its training been?" If you are not satisfied with the credibility of the answers to these questions or if the service animal is an emotional support animal, you may request further verification.

You should also call a CRO if there is any further doubt in your mind as to whether the pot-bellied pig is the passenger's service animal.

Finally, if you determine that the pot-bellied pig is a service animal, you must permit the service animal to accompany the passenger to her seat as long as the animal doesn't obstruct the aisle or present any safety issues and the animal is behaving appropriately in a public setting.

Example 2: A deaf passenger is planning to board the plane with his service animal. The service animal is a hearing dog and is small enough to sit on the deaf passenger's lap. While waiting to board the flight, the hearing dog jumps off the passenger's lap and begins

barking and nipping at other passengers in the waiting area. What should you do?

Since you have already made the determination that the hearing dog is a service animal and may accompany the deaf passenger on the flight, you may reconsider the decision if the dog is behaving in a manner that seems disruptive and infringes on the safety of other passengers. You should carefully observe the hearing dog's behavior and explain it in detail to a CRO (if the CRO is on the telephone). If, after careful consideration of all the facts presented, the CRO decides not to treat the dog as a service animal, you should explain your carrier's policy regarding traveling with animals that are not being allowed in the passenger cabin as service animals.

Requests for Seat Assignments by a Passenger Accompanied by a Service Animal

For a disabled passenger traveling with a service animal, you must provide, as the passenger with a disability requests, either a bulkhead seat or a seat other than a bulkhead seat. [Sec. 382.38(a)(3)]

If carriers provide special information concerning the transportation of animals outside the continental United States to any passengers, you must provide such information to all passengers with a disability traveling with a service animal on the flights. [Sec. 382.55(a)(3)]

E. Accommodations for Air Travelers Who Are Deaf, Hard of Hearing, or Deaf-Blind

If your carrier makes available a telephone reservation and information service to the public, you must make available a text telephone (TTY) to permit individuals who are deaf or hard of hearing to make reservations and obtain information. The TTY must be available during the same hours as the telephone service for the general public and the same wait time and surcharges must apply to the TTY as the telephone service for the general public. [Secs. 382.47(a) and (b)]

F. Communicable Diseases

Passengers With a Communicable Disease Are Permitted on Flight

Except as described below, you must not (i) refuse transportation to; (ii) require provision of a medical certificate from; or (iii) impose any condition, restriction, or requirement not imposed on other passengers on, a passenger with a communicable disease or infection. [Sec. 382.51(a)]

If Direct Threat to Health or Safety of Others, Limitations May Be Imposed

Only if a passenger with a communicable disease or infection poses a *direct threat* to the health or

safety of others, can you take any of the actions listed above. [Sec. 382.51(b)(1)] A *direct threat* means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

If you are faced with particular circumstances where you are required to make a determination as to whether a passenger with a communicable disease or infection poses a direct threat to the health or safety of others, you must make an individualized assessment based on a reasonable judgment, *relying on current medical knowledge or the best available objective evidence*. If the presentation of a medical certificate would alleviate concerns over the passenger's condition, or reasonable modification of policies, practices, or procedures would lessen the risk to other passengers, then you should consider this in making such an individualized assessment. You should also confer with appropriate medical personnel and a CRO when making this assessment.

If the Passenger Poses a Direct Threat to the Health and Safety of Others

If, in your estimation, a passenger with a communicable disease or infection poses a direct threat to the health or safety of other passengers, you may (i) refuse to provide transportation to that person; (ii) require that person to provide a medical certificate stating that the disease at its current stage would not be transmittable during the normal course of a flight or, if applicable, describing measures that would prevent transmission during the flight [Sec. 382.53(c)]; or (iii) impose on that passenger a special condition or restriction (e.g., wearing a mask). You must *choose the least restrictive* of the three options set forth above that would accomplish the objective. [Sec. 382.51(b)(4)]

At all times, as a matter of good customer service, you should treat the passenger with courtesy and respect.

G. Medical Certificates: When Are They Allowed?

A medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing the flight safely without requiring extraordinary medical assistance during the flight. Except under the circumstances described below, you must not require medical certification of a passenger with a disability as a condition for providing transportation.

You may require a medical certificate only if the passenger with a disability is an individual who:

- Is traveling on a stretcher or in an incubator (where such service is offered);
- Needs medical oxygen during the flight (where such service is offered); or
- Has a medical condition that causes the carrier to have reasonable doubt that the passenger can complete the flight safely without requiring extraordinary medical assistance during the flight. [Sec. 382.53 (a) and (b)]

Medical Certificate and a Passenger With a Communicable Disease or Infection

In addition, if you determine that a passenger with a communicable disease or infection poses a direct threat to the health or safety risk of others, you may require a medical certificate from the passenger. [Sec. 382.53(c)(1)] The medical certificate must be dated within 10 days of the flight date. [Sec. 382.53(c)(2)]

In the event that you determine the need for a medical certificate, you should indicate to the passenger with a disability the reason for the request. You should base your request on the reasons set forth under the law and outlined above.

At all times, you should treat the passenger from whom you are requesting a medical certificate with courtesy and respect.

Example: A passenger arrives at the gate with her six year old daughter. The girl's face and arms are covered with red lesions, resembling chicken pox. What should you do?

Generally, you must not refuse travel to, require a medical certificate from, or impose special conditions on a passenger with a communicable disease or infection. However, if a passenger appears to have a communicable disease or infection that poses a direct threat to the health or safety of other passengers, you may be required to make a determination about the best course of action based on the seriousness of the health risk and the ease of disease transmittal. For a communicable disease or infection to pose a direct threat, the condition must both be readily transmitted under conditions of flight and have serious health consequences (e.g., SARS). Medical conditions that are easily transmitted in aircraft cabins but have limited health consequences (e.g., a common cold) as well as conditions that are difficult to transmit in aircraft cabins but have serious health consequences (e.g., AIDS) do not pose a direct threat to the health or safety of passengers.

The first thing you should do is interview the passenger and her mother to obtain basic information about the girl's condition. This exchange should be done discreetly and in a courteous and respectful manner. If you still have a question about the nature of the

child's condition that will impact decisions about transportation, you should contact a CRO and explain the situation.

Here, the mother tells you and the CRO that the child has chicken pox but is no longer contagious. The CRO would likely consult with appropriate medical personnel to verify whether the child could be contagious based on the mother's statement.

If there is a reasonable basis for believing that the passenger poses a direct threat to the health or safety of others, you must choose the least restrictive alternative among the following options: (i) Refusing transportation to the individual; (ii) requiring a medical certificate; or (iii) imposing a special condition or limitation on the individual. If the medical support people indicate that there is a chance that the child is no longer contagious but only if a certain number of days have passed since the outbreak of the lesions, you could request a medical certificate before you permit the child to travel.

Having discussed the situation with the passenger and her mother and consulted the CRO and the medical support personnel, the request for a medical certificate appears to be reasonable under the circumstances and the least restrictive of the three options.

Keep in mind that section 382.53(c)(2) specifies that the medical certificate be from the child's physician and state that the child's chicken pox would not be communicable to other passengers on the flight. The medical certificate must also include any conditions or precautions that would have to be observed to prevent the transmission of the chicken pox to other passengers and be dated within ten days of the date of the flight. If the medical certificate is incomplete or if the passenger is attempting to travel before the date specified in the medical certificate or without implementing the conditions outlined to prevent transmission, the child would not be permitted to fly.

H. Your Obligation To Provide Services and Equipment

When assistance getting on or off a plane, making flight connections, or receiving transportation between gates is requested by a passenger with a disability, or offered by carrier personnel and accepted by the passenger, you must provide it. [Sec. 382.39(a)] More specifically, you must provide, as needed, the following:

- Services personnel,
- Ground wheelchairs,
- Boarding wheelchairs,
- Ramps or mechanical lifts. [Sec. 382.39(a)(1)]

Aircraft with more than 60 passenger seats having an accessible lavatory must be equipped with an operable on-board wheelchair. [Sec. 382.21(a)(4)] On-board wheelchairs must be equipped with footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring,

structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence. The on-board wheelchair must be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to easily be pushed, pulled, and turned in the cabin environment. [Sec. 382.21(a)(4)(iii)]

You must permit a passenger with a disability to provide written instructions and should accept oral advice from the passenger concerning the disassembly and reassembly of the passenger's wheelchair. [Sec. 382.41(h)] In addition, you should be familiar with how (i) a passenger accesses and uses a particular service or piece of equipment; (ii) the passenger's needs are being met by the service or piece of equipment; and (iii) that service should be provided or how that equipment operates, is disassembled, stored properly, and reassembled. Finally, consistent with good customer service, you should treat the passenger with a disability with courtesy and respect at all times by keeping the passenger informed about any problems or delays in providing personnel or equipment in connection with an accommodation.

Example: A passenger using a battery-powered wheelchair arrives at the gate and requests that the footrests and joy stick be removed and stowed. He expresses concern because after his last flight, the airline personnel initially misplaced one of the components of the wheelchair when they disassembled it and stored it during the flight. What should you do?

Presuming the aircraft is the type that can accommodate the storage of a battery-powered wheelchair, you are required to stow his wheelchair properly on board and you may, if needed, provide an aisle chair. As a preliminary matter, you should receive training from your carrier on the use of equipment and services for passengers with a disability, including battery-powered wheelchairs. In addition to the formal training, it is worthwhile to review with the passenger how best to meet his needs. For example, you should ask the passenger to review the procedure for disassembling the wheelchair, storing parts during the flight, and reassembling the wheelchair. Once you are clear about the process, you should communicate with the appropriate employees to ensure that they understand the passenger's needs with respect to his battery-powered wheelchair. Your carrier should have a policy and process for ensuring that the battery-powered wheelchair is returned to the passenger at his destination in the same condition in which it was received by the carrier. Problems concerning the reassembly of expensive battery-powered wheelchairs can be minimized by following section 382.41(g)(2), which governs the

proper storage of such wheelchairs. See also Chapter 5, Section D.

I. Attendants

Except under limited circumstances, you cannot require a person with a disability to be accompanied by an attendant. [Sec. 382.35(a)] See Chapter 4, Section E for a discussion of the requirements for an attendant under the law.

Chapter 4: Assisting Air Travelers With Disabilities at the Airport

- A. Accessibility of Terminal Facilities and Services
- B. Security Screening for Air Travelers With a Disability
- C. Air Travelers With a Disability Changing Planes
- D. Accommodations for Air Travelers Who are Deaf, Hard of Hearing, or Deaf-Blind
- E. Attendants

A. Accessibility of Terminal Facilities and Services

All terminal facilities and services owned, leased, or operated by a carrier at a commercial service airport, including parking and ground transportation, must comply with the Standards for Accessible Design under the Americans with Disabilities Act. [Sec. 382.23(e)] These terminal facilities and services must be accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. [Sec. 382.23(b)] For example, terminals must provide accessible inter-terminal transportation systems, e.g., shuttle vehicles and people movers. [Sec. 382.23(d)]

As appropriate to your specific responsibilities and duties when dealing with the traveling public and consistent with all carriers' obligation to ensure training to proficiency [Sec. 382.61(a)], you should understand how these services and facilities function as well as their uses by passengers with a disability. You should also know where they are located within or without the terminal.

Carriers must also ensure that there is an accessible path between the gate and the area from which aircraft are boarded. [Sec. 382.23(c)]

Carriers shall not (i) restrict the movements of individuals with disabilities in terminals; (ii) require them to remain in a holding area or other location in order to receive assistance; or (iii) mandate separate treatment for individuals with disabilities except as required or permitted under Part 382. [Sec. 382.55(c)]

B. Security Screening for Air Travelers With a Disability¹

Security Screening for Passenger With a Disability Same as for Other Passengers

You must undertake a security screening of a passenger with a disability in the same manner as any other passenger. You must not subject a passenger with a disability who possesses an aid used for independent travel to a special screening procedure if the passenger and the aid or assistive device clear security without activating the security system. [Sec. 382.49(a)]

Screening Mobility Aid or Assistive Device

The statement of the law set forth above would not, however, prohibit you from examining a mobility aid or assistive device if, in your judgment, it may conceal a weapon or other prohibited item even if the mobility aid or assistive device does not activate the security system.

In the event a passenger's mobility aid or assistive device activates the security system, you must conduct the security search of the passenger with a disability in the same manner as you would for other passengers who activate the system.

If Passenger With a Disability Requests Private Screening

You must not require a private security screening for a passenger with a disability for any reason different from the reasons other passengers would be subject to a private security screening. However, if a passenger with a disability requests a private security screening in a timely manner, you must provide it in time for the passenger to board the flight. [Sec. 382.49(b)] If, however, you are able to conduct a security screening of a passenger with a disability *without* the need for a physical search of the person, you are *not* required to provide a private screening. [Sec. 382.49(c)]

Finally, under certain circumstances, safety considerations may require you to exercise discretion in making the above decisions. You must always seek assistance from the appropriate designated personnel in making such a decision.

¹ In the wake of the events of September 11, 2001, in most cases, TSA has taken over for carriers in the area of providing security screenings of passengers. Should carriers resume this responsibility or in cases where carriers still retain some involvement in the security screening process, this section would be applicable to carriers and contractors of carriers performing this function.

C. Air Travelers With a Disability Changing Planes

As an employee of the delivering carrier, on request, you must provide assistance to a passenger with a disability in making flight connections and providing transportation between gates. [Sec. 382.39(a)] This is the case regardless whether the delivering carrier has an interline agreement with the other carrier. Where needed and to the extent required by law, you must provide services personnel, wheelchairs, and ramps or mechanical lifts. [Sec. 382.39(a)(1)] **Note:** Carriers must not leave a passenger with a disability unattended in a ground wheelchair or other device in which the passenger is not independently mobile for more than 30 minutes. [Sec. 382.39(a)(3)]

Example: A passenger who developed a progressive onset of weakness in his legs during his flight requests a wheelchair when he deplanes to assist him in making it over to the gate of his connecting flight. What should you do?

Because the delivering carrier has an obligation to provide transportation to a passenger with a disability to the gate of his connecting flight, you must provide timely, accessible ground transportation so he makes it to his connecting flight. In addition, you should keep in mind that once the wheelchair service is provided, you cannot leave the passenger unattended for more than 30 minutes if he is not independently mobile. As a matter of good customer service, you should treat the passenger with courtesy and respect throughout this process.

D. Accommodations for Air Travelers Who Are Deaf, Hard of Hearing, or Deaf-Blind

Carriers are responsible for ensuring that passengers with disabilities, including those with vision or hearing impairments, receive the same information in a timely manner that the carrier provides to other passengers in the terminal or on the aircraft, including but not limited to, information about ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments and the checking and claiming of luggage. [Sec. 382.45(c)] Passengers with disabilities who are unable to obtain such information from the audio or visual system used by carriers in airports or on aircraft must request such information to be provided in an accessible manner.

TTY

You must make available a TTY to permit individuals who are deaf or hard of hearing to obtain information from carriers. *See also* Chapter 3, Section E. The TTY must be available during the same hours as the telephone service for

the general public and the same wait time and surcharges must apply to the TTY as the telephone service for the general public. [Secs. 382.47(a) and (b)] The TTY must also be available if the passenger who is deaf or hard of hearing wishes to contact a CRO. [Sec. 382.65(a)(2)] In addition, you should inform the individual about the DOT Hotline that is accessible by a TTY. You should be familiar with the use of the TTY and its location(s) within the terminal.

In addition, you should be aware of the option of using a relay operator to connect one party who is using a TTY and one party who is using a voice-operated telephone. By dialing 711 on any telephone (TTY or voice operated) you can contact a relay operator who serves as a "go between" between a person using a TTY and a person using a voice-operated telephone.

Example: A passenger who is deaf complains to you about another employee whom she believes has been rude and humiliated her when she asked for an alternate means of communication because she was unable to hear what was being said to passengers waiting to board the flight. What should you do?

As a matter of good customer service, you should apologize to the passenger for any insensitive behavior on the part of carrier personnel. In general, you should carefully observe and gauge the manner in which this passenger who is deaf communicates. When communicating, try to use the same method, e.g., speaking slowly, communicating in writing or with the assistance of an aid or device, etc. Try to find out what happened and what information she missed by communicating in an accessible manner.

You may also consult with a CRO to see about sign language or other assistive services that might be available for this passenger. If the CRO is made available by telephone and the passenger requests, TTY service must be available for the passenger to communicate directly with the CRO. You should also notify the appropriate flight crew regarding ensuring that the transmittal of information onboard is accessible to this passenger.

E. Attendants

You should know that it is generally not appropriate to require a passenger with a disability to be accompanied by a personal care attendant. [Sec. 382.35(a)] Even if you have concerns about a passenger's ability to access the lavatory or the passenger's need for extensive special assistance which airline personnel are not obligated to provide, e.g., assistance in eating, assistance within the lavatory, or provision of medical services [Sec. 382.39(c)], you must not require the passenger with a disability to travel with a personal care attendant except in the circumstances described below.

Safety Considerations May Necessitate an Attendant

In the interests of safety, however, you may require that a passenger with a disability travel with an attendant as a condition of receiving air transportation if the passenger is:

- Traveling on a stretcher or in an incubator (where such service is offered);
- Mentally disabled and unable to comprehend or respond appropriately to safety instructions;
- Severely impaired with respect to mobility and would be unable to assist in the passenger's own evacuation from the aircraft; or
- Deaf and severely impaired with respect to vision such that the passenger could not adequately communicate with airline employees to permit transmission of the safety briefing. [Secs. 382.35(b)(1)–(4)]

If Carrier Contends That Attendant Is Required for Safety Reasons and Passenger Disagrees

If, after careful consultation with a CRO and any other personnel required to be consulted by the carrier, you determine that a passenger with a disability must travel with an attendant for one of the reasons described in Section 382.35(b) (see above), then the carrier may require that the passenger be accompanied by an attendant. If your decision is contrary to the self-assessment of the passenger with a disability, then the carrier must not charge for the transportation of the attendant. [Sec. 382.35(c)] In addition, if no seat is available on the flight for the attendant whom the carrier has determined to be necessary and as a result the passenger with a disability with a confirmed reservation is unable to travel on the flight, the passenger with a disability is eligible for denied boarding compensation. [Sec. 382.35(d)] For purposes of determining whether a seat is available for an attendant, the attendant must be deemed to have checked in at the same time as the passenger with a disability. [Sec. 382.35(e)]

In the event you choose to recruit an attendant to accompany the passenger with a disability, even though carriers are not obligated to do so, you may ask (i) an off-duty airline employee traveling on the same flight to function as the attendant; (ii) a volunteer from among the other customers traveling on the flight and offer a free ticket for their assistance; or (iii) the passenger with a disability to choose an attendant and offer a free ticket.

If the attendant is accompanying a passenger traveling on a stretcher or in

an incubator, the attendant must be capable of attending to the passenger's in-flight medical needs. [Sec. 382.35(b)(1)] Otherwise, the purpose of the attendant is to assist the passenger with a disability in an emergency evacuation. Other than the situation set forth above when an attendant is accompanying a passenger who is on a stretcher or in an incubator, the attendant is not obligated to provide personal services to the passenger with a disability such as assistance with eating or accessing the lavatory.

Example: A passenger with quadriplegia traveling alone approaches the check-in counter. You have concerns as to whether the passenger's mobility impairment is so severe that he would be unable to assist in his own evacuation from the aircraft. What should you do?

You should begin by communicating with the passenger to determine the extent of his mobility impairment. As a matter of good customer service, you should treat the passenger with courtesy and respect at all times. Under the circumstances, you should contact a CRO to discuss the situation and determine whether the passenger must be accompanied by an attendant. You and the CRO could begin by asking the passenger about his mobility impairment and whether he would be able to assist with his own evacuation in the event of an emergency. More specifically, you should determine whether the passenger has the functional ability to make any progress toward an exit during an evacuation. If the passenger tells you that his ability to assist in his evacuation is limited to shouting "Help!", you and the CRO should explain to him that the issue is whether he can physically assist in his own evacuation. If not, he must travel with an attendant.

If, after speaking with the passenger, you and the CRO determine that he must be accompanied by an attendant because of his severe mobility impairment, you should explain this requirement to the passenger. Next, you should explain that he can choose someone to serve as his attendant or you can assist him by recruiting an off-duty employee or another passenger on the flight to serve as his attendant. You must not charge for the transportation of the attendant. You should also explain that the purpose of the attendant is to assist in the case of an emergency evacuation.

Chapter 5: Assisting Air Travelers With Disabilities Boarding, Deplaning, and During the Flight

- A. Aircraft Accessibility
- B. Seating Assignments and Accommodations
- C. Boarding and Deplaning Assistance
- D. Stowing and Treatment of Personal Equipment
- E. Services in the Cabin
- F. Safety Briefings

A. Aircraft Accessibility

In order to assist passengers with a disability, it is important for you to have

some understanding of how aircraft have been made accessible to accommodate those passengers. The following features are required for aircraft *ordered by* the carrier after April 5, 1990, or *delivered to* the carrier after April 5, 1992. In addition, different size airplanes must be equipped with different features according to the law. For example:

- Aircraft with 30 or more passenger seats must have movable aisle armrests on at least half of the aisle seats where it is feasible and it does not interfere with safety. [Secs. 382.21(a)(i) and (ii)] (Movable armrests are not feasible where tray tables and video entertainment systems are installed.);
- Aircraft with 100 or more passenger seats must have priority storage space within the cabin to stow at least one passenger's folding wheelchair [Sec. 382.21(a)(2)] and DOT has interpreted that to mean a space at least 13 inches wide, 36 inches high, and 42 inches long;
- Aircraft with more than one aisle in which lavatories are provided must include at least one lavatory accessible to passengers with a disability accessing the lavatory with an on-board wheelchair [Sec. 382.21(a)(3)];
- Aircraft with more than 60 passenger seats having an accessible lavatory must be equipped with an on-board wheelchair [Sec. 382.21(a)(4)(i)]; and
- Aircraft with more than 60 passenger seats having an inaccessible lavatory must be equipped with an on-board wheelchair when a passenger with a disability informs the carrier (providing advance notice under Sec. 382.33(b)(8)) that the passenger can use an inaccessible lavatory but cannot reach the lavatory from a seat without the use of an on-board wheelchair. [Sec. 382.21(a)(4)(ii)]

Aircraft in service on April 5, 1990, are not required to be retrofitted for the sole purpose of enhancing accessibility. [Sec. 382.21(b)(1)] However, with respect to all aircraft with more than 60 passenger seats operated under 14 CFR part 121, regardless of the age of the aircraft, carriers must provide on-board wheelchairs if (i) the aircraft has an accessible lavatory; or (ii) a passenger with a disability gives up to 48 hours' notice that the passenger can use an inaccessible lavatory. [Sec. 382.21(b)(2)] Whenever an aircraft operating under 14 CFR part 121 which does not have the accessibility features set forth above undergoes replacement of (i) cabin interior elements or lavatories, or (ii) existing seats with newly-manufactured seats (*i.e.*, previously unused), the carrier must comply with the

accessibility features set forth above with respect to the feature being replaced. [Sec. 382.21(c)]

Where Part 382 requires a particular aircraft to have an on-board wheelchair and a stowage space within the cabin for at least one passenger's folding wheelchair, that aircraft must have stowage spaces for *both* of these chairs and must accommodate *both* of these chairs as required by law. [Secs. 382.21(a)(4)(i) and 382.21(a)(2)]

Any replacement or refurbishing of the aircraft cabin must not reduce existing accessibility to a level below that specified under the law. [Sec. 382.21(e)] Carriers must maintain aircraft accessibility features in proper working order. [Sec. 382.21(f)]

B. Seating Assignments and Accommodations

Only Safety Affects Seat Assignments

You must not exclude a passenger with a disability from any seat in an exit row or other location or require a passenger with a disability to sit in a particular seat based on the passenger's disability, except to comply with FAA safety requirements. [Sec. 382.37(a)] If a passenger's disability results in involuntary behavior that would result in refusal of transportation under section 382.31 and the safety problem could be addressed by seating the passenger in a particular location, you must offer the passenger that particular seat location as an alternative to refusing transportation. [Sec. 382.37(b)]

Example: A passenger with Tourette's syndrome—a neurological disability that manifests itself by episodes of shaking, muscle tics, and/or spasms and uncontrolled shouting, barking, screaming, cursing, and/or abusive language—approaches the check-in desk, self-identifies as a passenger with a disability, and presents brochures explaining the disability to the agent. What should you do?

As long as safety is not an issue, you cannot restrict this passenger from any particular seat, including an exit row. If this passenger's disability causes him to physically touch other passengers or flight crew involuntarily, safety considerations could require that he be seated in his own row, if available, as an alternative to being refused transportation. However, if the physical and/or verbal manifestations of this passenger's Tourette's syndrome are such that the safety of others would be jeopardized, *e.g.*, if the passenger with Tourette's syndrome involuntarily touches or strikes other passengers or flight crew, it might create a safety concern. Therefore, refusing transportation could be appropriate.

Otherwise, although the passenger's conduct may create an uncomfortable experience for other passengers, if his involuntary behavior only amounts to an annoyance and not a safety concern, you

must not restrict the passenger with Tourette's syndrome from any seating assignment.

Four Specific Situations in Which a Seating Accommodation Must Be Provided

If a passenger self-identifies as an individual with a disability, there are four specific situations where you must provide a particular seating accommodation, if requested. The four situations are as follows:

- If the passenger uses an aisle chair to access the aircraft and cannot readily transfer over a fixed aisle armrest, you must provide a seat in a row with a movable armrest if one exists [Sec. 382.38(a)(1)];
- If the passenger (i) is a passenger who is traveling with an attendant who will be performing functions during the flight that airline personnel are not required to perform, e.g., assistance with eating [Sec. 382.38(a)(2)(i)]; (ii) is a passenger with a visual impairment who is traveling with a reader/assistant who will be performing functions for the passenger during the flight [Sec. 382.38(a)(2)(ii)]; or (iii) is a passenger who is deaf, hard of hearing, or deaf-blind who is traveling with an interpreter who will be performing functions for the passenger during the flight, you must provide a seat for the care attendant next to the passenger with a disability [Sec. 382.38(a)(2)(iii)];
- If the passenger is accompanied by a service animal, you must provide a bulkhead seat if one exists or a seat other than a bulkhead seat, depending on the passenger's request [Sec. 382.38(a)(3)]; or
- If the passenger has a fused or immobilized leg, you must provide a bulkhead seat if one exists or other seat with more legroom than other seats on the side of the aisle that best accommodates the passenger. [Sec. 382.38(a)(4)]

Regardless of which type of system a carrier uses for handling its seat assignments, you must provide the required seating accommodation in the four specific situations described above, if requested. The type of seat assignment system will determine how a carrier fulfills its obligation to provide these seating assignments. You should be aware of your carrier's method for managing seat assignments and be able to explain it to passengers with disabilities and the general passenger population depending on the circumstances.

Advance Seat Assignments

Carriers providing advance seat assignments may employ either the seat

"blocking" method or the "priority" seating method.

Seat "Blocking" Method

Carriers may "block" an adequate number of seats to provide the seating accommodations discussed above. If carriers employ this "block" method, they must not assign these "blocked" seats to passengers other than the types of passengers entitled to a seating accommodation discussed above until 24 hours before the scheduled departure of the flight. At any time up to 24 hours before the flight, carriers using the "block" system must assign a "blocked" seat to any passenger in need of a particular seating accommodation outlined in the four situations above.

If a passenger with a disability meeting the above requirements does not make a request for a seating accommodation at least 24 hours before the scheduled departure of the flight, a carrier using the "block" system must provide the requested seating accommodation to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so. [Secs. 382.38(b)(1)(i), (ii), and (iii)]

Example: A passenger with a service animal calls you, a reservation agent, several days before the scheduled departure of her flight and requests a bulkhead seat. What should you do?

The aircraft has four bulkhead seats, two of which are "blocked" under your carrier's reservation system for passengers traveling with a service animal or passengers with an immobilized leg. Since the passenger has requested the seating accommodation more than 24 hours in advance of the scheduled departure of the flight, you must assign one of the "blocked" bulkhead seats to this passenger with the service animal.

If, on the other hand, the passenger with the service animal requests the bulkhead seat within 24 hours of the scheduled departure of her flight, you must provide the bulkhead seat to her and her service animal to the extent practicable, but you are not required to reassign a seat already assigned to another passenger in order to do so.

"Priority" Seating Method

Carriers may designate an adequate number of "priority" seats for passengers with a disability who meet the above requirements and who request a seating accommodation. In this case, the carrier must provide notice to any passenger assigned to a "priority" seat (other than passengers with a disability entitled to a seating accommodation in one of the four situations discussed above) that they are subject to being reassigned to another seat if necessary to provide a seating accommodation required under the law. The carrier may provide this notice through its computer

reservation system, verbal information provided by reservations personnel, counter signs, seat cards or notices, frequent-flyer literature, or other appropriate means. [Sec. 382.38(b)(2)(i)] The carrier must provide a "priority" seat to a passenger with a disability entitled to such accommodation if the passenger requests the accommodation and checks in at least one hour before the scheduled departure of the flight. If all of the designated "priority" seats have been assigned to other passengers who do not have disabilities, the carrier must reassign the seats of the other passengers to accommodate the passenger with a disability entitled to a seating accommodation as discussed above. [Sec. 382.38(b)(2)(ii)]

If a passenger with a disability does not check in at least one hour before the scheduled departure of the flight, a carrier using the "priority" seating system must provide the requested seating accommodation, to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so. [Sec. 382.38(b)(2)(iii)]

Example: A passenger with an immobilized leg requests a bulkhead seat and checks in two hours before the scheduled departure of the flight. Your carrier employs the "priority" seating method and has designated all four bulkhead seats on the aircraft as "priority" seating. Three of the bulkhead seats have already been assigned to three passengers traveling with small service animals who have requested the seating accommodations and checked in at least an hour before the scheduled departure of the flight. The fourth "priority" bulkhead seat has been assigned to a passenger who also checked in two hours before the flight and uses an aisle chair to enplane who prefers the bulkhead seat to a seat in a row with a movable armrest. What should you do?

The passenger who uses the aisle chair to enplane should have received notice that she has been assigned a "priority" seat. Because she is not a passenger with an immobilized leg or a passenger traveling with a service animal, she is not automatically entitled to a "priority" bulkhead seat. (However, she would be entitled to a "priority" seat in a row with a movable armrest if she requested one and checked in at least an hour before the scheduled departure of the flight.) The passenger using the aisle chair to enplane should have been notified that you might have to reassign her seat if a passenger with a service animal or a passenger with an immobilized leg requests a "priority" bulkhead seating accommodation and checks in at least one hour before the scheduled departure of the flight. Accordingly, the passenger using the aisle chair would be reassigned to a seat in a row with a movable armrest and the passenger with the immobilized leg would be assigned to the fourth "priority" bulkhead seat.

Seating Accommodations for Passengers With a Disability Other Than One of the Four Types Listed Above

Passengers with a disability—other than the types of passengers with a disability entitled to a seating accommodation in one of the four specific situations discussed above—may identify themselves as passengers with a disability and request a seating accommodation. [Sec. 382.38(c)]

In this case, a carrier employing the “block” method is *not* required to offer one of the “blocked” seats when the passenger with a disability makes a reservation more than 24 hours before the scheduled departure time of the flight. However, the carrier must assign the passenger with a disability any seat not already assigned to another passenger that accommodates the passenger’s needs, even if that seat is not available for assignment to the general passenger population at the time of the request. [Secs. 382.38(c)(1)(i) and (ii)]

Example: A passenger with arthritis in his spine making his back extremely stiff calls a week before his flight and asks you, the reservation agent, for a bulkhead seat. He explains that it is much easier for him to access a bulkhead seat because he has to be lowered into the seat with assistance from another person. The aircraft has six bulkhead seats, two of which are “blocked” under your carrier’s reservation system for passengers traveling with service animals or passengers with immobilized legs. One of the four remaining bulkhead seats is unassigned when he calls. What should you do?

Although your carrier normally reserves such seats for its frequent flier passengers, you must assign the remaining bulkhead seat to the passenger with arthritis in his spine.

In a similar situation, a carrier using the “priority” seating method must assign the passenger with a disability any seat not already assigned to another passenger that accommodates the passenger’s needs, even if that seat is not available for assignment to the general passenger population at the time of the request. If this passenger with a disability is assigned to a “priority” bulkhead seat, he/she is subject to being reassigned to another seat if necessary to provide a seating accommodation to a passenger with a disability entitled to a seating accommodation required under the law, as discussed above. [Sec. 382.38(c)(2)(i) and (ii)]

Example: Suppose the same passenger, with arthritis in his spine, in Example 1 above, calls your carrier, asking for a bulkhead seat, but your carrier uses the “priority” seating method. The aircraft has six bulkhead seats, two of which are “priority” seats for passengers traveling with service animals or passengers with immobilized legs. At the time of the call, all

four of the other “non-priority” bulkhead seats have been assigned to other passengers, but the two “priority” seats are unassigned. What should you do?

You should assign the passenger with arthritis in his spine one of the two “priority” seats, but you must notify him that he may have his “priority” seat reassigned if another passenger who is entitled to a “priority” seat requests one. On the day of the flight, a passenger with a service animal and a passenger with a fused leg show up for the same flight and request bulkhead seats. In this instance, the passenger with arthritis in his spine would be informed that his “priority” seat must be assigned to one of those passengers and that he must be moved to another seat. As a matter of good customer service, he may be assigned an aisle seat because it would make it easier to access.

No Advance Seat Assignments

If a carrier does not provide advance seat assignments, you must allow passengers who identify themselves as passengers with a disability in need of a seating accommodation to pre-board—even before other passengers entitled to pre-board—and select the seat assignment that best meets their needs. [Sec. 382.38(d)] If a carrier wishes to comply with this requirement in another way, it must receive written approval from DOT. [Sec. 382.38(e)]

Other Issues Relating to Seat Assignments

You must provide a seat assignment accommodation when requested by a passenger with a disability even if the seat is not otherwise available for assignment to the general passenger population at the time of the request. [Sec. 382.38(f)] You cannot reassign the seat of a passenger with a disability who has received a seat assignment to accommodate a disability in the event of a subsequent request for the same seat unless the passenger with a disability consents to the reassignment. [Sec. 382.38(g)]

You must not deny transportation to any individual on a flight in order to provide a seat accommodation to a passenger with a disability. [Sec. 382.38(h)] You are also not required to provide more than one seat per ticket or a seat in a class of service other than the one the passenger has purchased to accommodate a passenger with a disability requesting a seating accommodation. [Sec. 382.38(i)] You must comply with all FAA safety requirements in responding to requests from individuals with a disability for seating accommodations. [Sec. 382.38(j)]

Example: A passenger with an economy class ticket and an immobilized leg (with a full-leg cast) arrives more than an hour before his flight is scheduled to depart. He arrives at the check-in counter, explains his

disability, and insists that he is entitled to a seat in first class to accommodate his extended leg. Your carrier uses the “priority” seating method for advance seat assignments. What should you do?

Since the passenger has identified himself as a passenger with a disability and has requested a seat assignment to accommodate him, you must provide a bulkhead seat or other seat with more legroom than other seats on the side of the aisle that best accommodates him. While first class seats generally have more legroom than economy class seats, you are not required to provide a seat in a class of service other than the one the passenger has purchased in order to accommodate him. You should explain politely and respectfully that under the law, you must seat him in (i) a bulkhead or (ii) an aisle seat in economy class on the side of the plane that would best accommodate his leg. At his subsequent request for a bulkhead seat, you must arrange to move another passenger from the bulkhead seat and give it to the passenger with the immobilized leg. Although you are not required to do so under the law, you may choose to seat him in first class.

C. Boarding and Deplaning Assistance

If a passenger with a disability requests assistance getting on or off an airplane or you offer assistance and the passenger consents to the type of boarding or deplaning assistance you offer, you must provide such assistance. [Sec. 382.39(a)] The type of assistance you must offer includes, as needed, services personnel and the use of wheelchairs, ramps, or mechanical lifts. [Sec. 382.39(a)(1)]

Keep in mind, however, that a wheelchair is not required or desired in all cases. A wheelchair may not be an appropriate assistive device in a particular situation. For example, a passenger with vision impairment may need a sighted guide, not a wheelchair.

Carriers must train employees to proficiency in the use of the boarding assistance equipment and procedures regarding the safety and dignity of passengers receiving boarding assistance. [Secs. 382.40(d) and 382.40a(d)] Therefore, regardless of the size of the aircraft, you should know how to use mechanical boarding assistance devices and the appropriate procedures for providing boarding assistance.

In addition, you should be aware that when level-entry boarding is not required or if a lift is temporarily not functioning, you must obtain the consent of the passenger with a disability to the means of boarding assistance. [Sec. 382.40(c)(5)] Therefore, in such situations, you should present the various options and provide only the type of boarding assistance to which the passenger consents. If the passenger does not consent to the available means

of boarding assistance, you should contact a CRO.

You cannot leave a passenger in a boarding wheelchair or other device in which the passenger is not independently mobile for more than 30 minutes. [Sec. 382.39(a)(3)]

Carriers must provide access to the airplane for a passenger with a disability by a level-entry loading bridge or accessible passenger lounges where these means are available. [Sec. 382.39(a)(2)] But depending on the size of the aircraft, carriers have different obligations to provide boarding assistance to individuals with a disability using mechanical lifts, ramps, or other suitable devices that do not require you to physically lift or carry passengers up stairs. [Secs. 382.40 and 382.40a]

Boarding and Deplaning Assistance Where Level-Entry Boarding Is Unavailable

For aircraft with 19 or more seats operating at airports with 10,000 or more annual enplanements where level-entry boarding is not available [Secs. 382.40(a) and 382.40a(a)], carriers must provide boarding assistance to passengers with a disability using mechanical lifts, ramps, or other suitable devices that do not require you to physically lift or carry passengers up stairs. [Secs. 382.40(b) and 382.40a(b)] In addition, carriers may require that a passenger seeking boarding assistance by use of a lift check in for the flight one hour before the scheduled departure time. [Secs. 382.40(c)(3) and 382.40a(c)(3)] You must make a reasonable effort to accommodate the passenger and provide the boarding assistance by lift even if the passenger does not check in one hour before the scheduled departure time, as long as it would not delay the flight.

Boarding assistance by mechanical lift is not required in the following situations:

- On aircraft with fewer than 19 seats;
- On float planes;
- On the following 19-seat capacity aircraft models that are unsuitable for boarding assistance by lift: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D Models);
- On any other 19-seat aircraft model determined by DOT to be unsuitable for boarding assistance by lift; [Sec. 382.40(c)(4)]; or
- On any widebody aircraft determined by DOT to be unsuitable for boarding assistance by lift, ramp, or other device.

If boarding assistance by lift is not required (as set forth above) or it cannot be provided for reasons beyond the

control of the carrier, e.g., the mechanical lift is not functioning, then boarding assistance must be provided by any available means, except physically hand-carrying the passenger. Hand-carrying is defined as directly picking up the passenger's body in the arms of one or more carrier personnel to effect a change of level that the passenger needs to enter or leave the aircraft. [Sec. 382.39(a)(2)]

Except in an Emergency Evacuation, No Hand-Carrying Passengers

Under no circumstances—except for emergency evacuations—should you physically pick up a passenger with a disability to provide boarding or deplaning assistance. [Sec. 382.39(a)(2)]

Example: A woman asks for assistance in boarding a flight with 30 seats. General boarding for passengers is by a set of stairs on the tarmac. When she arrives at the gate and asks for boarding assistance, she is provided a boarding wheelchair, but you inform her that the mechanical lift is out of order. The passenger tells you to physically pick her up and carry her up the stairs and onto the plane because she really needs to make the flight. What should you do?

Under the law, you must not physically hand-carry the passenger onto the plane. Hand-carrying is only appropriate in the case of an emergency evacuation. Even though the law states that the passenger must consent to the type of boarding assistance and she has requested to be hand carried, you must not hand-carry her onto the aircraft. Instead, you should contact a CRO for advice about options for alternative means of boarding the passenger, e.g., carrying the boarding wheelchair, with the passenger in it, up the stairs and onto the plane. Next, you and the CRO should explain to the passenger that, under the law, you are not permitted to physically hand-carry her onto the plane. In addition, you should explore other available options for assisting this passenger with boarding the aircraft, including carrying the passenger onto the plane in a boarding wheelchair or arranging for another flight with a working lift or a jet bridge. If the passenger consents to being carried onto the plane in the boarding wheelchair, you may do so. Regardless, you should notify the appropriate personnel that the mechanical lift is not functioning properly and arrange for repair as quickly as possible.

D. Stowing and Treatment of Personal Equipment

You should be familiar with the legal requirements for storage and treatment of personal equipment used by passengers with a disability, including ventilator/respirators, non-spillable batteries, canes, wheelchairs, and other assistive devices. [Sec. 382.41]

Storing Assistive Devices in the Aircraft Cabin

You must allow passengers with a disability to bring their personal

ventilators/respirators, including non-spillable batteries, on board the aircraft as long as FAA safety regulations are met. [Sec. 382.41(b)] You must permit passengers to stow their canes and other assistive devices in the cabin and close to their seats, consistent with FAA safety regulations concerning carry-on items. [Sec. 382.41(c)]

Example: Because a passenger with a disability arrived at the airport late, time and space constraints on board the aircraft require you to store her assistive walking device in first class, even though her seat assignment is in the back of the plane in economy class. She insists that she has the right to have her assistive walking device stored near her. She explains further that she would need this device to access and use the lavatory. What should you do?

You must permit a passenger with a disability to bring her assistive devices into the cabin as long as FAA safety regulations are met. [Sec. 382.41(b)] In addition, the rule generally requires you to allow a passenger to stow her assistive device close to her seat, consistent with FAA safety regulations concerning carry-on items. [Sec. 382.41(c)] Under the circumstances, you should reassess the storage space and consider either moving the passenger closer to her walker or the walker closer to the passenger.

You must not count assistive devices brought on board the aircraft by a passenger with a disability toward the limit on the passenger's carry-on items. [Sec. 382.41(d)] Wheelchairs and other assistive devices that cannot be stowed in the cabin must be stowed in the baggage compartment with priority over other cargo and baggage. [Sec. 382.41(f)(3)] In addition, because carriers cannot charge for facilities, equipment, or services required under the law to be provided to qualified individuals with a disability, no charge would be imposed if a wheelchair or assistive device exceeded the weight limit on checked baggage. [Sec. 382.57]

Example: A passenger with multiple sclerosis is one of many passengers on a flight who is informed that the flight will not be taking off because of mechanical problems. It is late at night and the carrier has announced that the passengers will be put up in a hotel for the night and rescheduled on a flight leaving the following morning. The passenger with multiple sclerosis approaches you when she hears the announcement and explains that she needs access to her checked luggage because it contains her syringe and medication for her multiple sclerosis which she must take on a daily basis. What should you do?

The passenger's syringe and medication would be considered an assistive device under the law. Under section 382.41(f)(1), because the passenger requested the return of her assistive device, you must return it to her. As a matter of customer service, you may also advise such passengers (e.g., via the carrier's Web site or other consumer

information materials) that the carrier recommends to all of its passengers who require such medication or other items for medical necessity to bring a carry-on bag containing the medication or other item on board. Such medication carry-on bags would not be counted toward the passenger's carry-on baggage allotment.

Wheelchairs

Carriers must permit storage in the cabin of wheelchairs or components of wheelchairs, including folding, collapsible, or breakdown battery-powered wheelchairs [Sec. 382.41(e)] as follows:

- In overhead compartments and under seats consistent with FAA safety regulations for carry-on items. [Sec. 382.41(e)(1)]
- If the aircraft contains a closet or storage area of a size sufficient to accommodate a passenger's folding, collapsible, or breakdown wheelchair, the carrier must designate priority stowage space for at least one passenger's wheelchair in that area. If a passenger with a disability decides to pre-board, the passenger may stow the wheelchair in the designated storage space with priority over the carry-on items brought on board by other passengers or crew members boarding the plane at the same airport. If, on the other hand, a passenger with a disability chooses not to pre-board, the passenger may stow the wheelchair in the designated storage space on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the space. [Sec. 382.41(e)(2)]
- If the aircraft cabin does not contain a storage area of a size sufficient to accommodate a folding, collapsible, or breakdown wheelchair, you must stow the wheelchair in the cargo compartment with priority over other luggage. [Sec. 382.41(e)(3)]

Wheelchairs Unable To Be Stowed in the Aircraft Cabin as Carry-On

When a folding, collapsible, or breakdown wheelchair cannot be stowed in the cabin as carry-on baggage, you must ensure the timely checking and return of the passenger's wheelchair or other assistive device as close as possible to the door of the aircraft, so that the passenger with a disability can use his or her own equipment, where possible, consistent with DOT regulations concerning transportation of hazardous materials. [Sec. 382.41(f)]

If, on the other hand, a passenger with a disability requests, you should return the wheelchair or other assistive device at the baggage claim area instead of at the door of the aircraft. [Sec. 382.41(f)(1)]

A passenger's wheelchair or other assistive device must be stowed in the baggage compartment with priority over other items and baggage. [Sec. 382.41(f)(3)] In order to ensure the timely return of a passenger's wheelchair or other assistive device, it must be among the first items retrieved from the baggage compartment. [Sec. 382.41(f)(2)] If giving priority to wheelchairs and other assistive devices results in passengers' non-assistive device-related baggage being unable to be carried on the flight, you must use your best efforts to ensure that the non-assistive device-related baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

Battery-Powered Wheelchairs

You must accept a passenger's battery-powered wheelchair, including the battery, as checked baggage unless baggage compartment size and aircraft airworthiness considerations prohibit it. [Sec. 382.41(g)]

Carriers may require that a passenger with a disability wishing to have a battery-powered wheelchair transported on a flight (including in the cabin where required) check in for the flight one hour before the scheduled departure time. [Sec. 382.41(g)(1)] You must also make a reasonable effort to accommodate the passenger and transport the wheelchair even if the passenger does not check in one hour before the scheduled departure time, as long as it would not delay the flight.

If (i) the battery on the passenger's wheelchair has been labeled by the manufacturer as *non-spillable* or (ii) the battery-powered wheelchair with a *spillable* battery can be loaded, stored, secured, and unloaded in an upright position, you must *not require* the battery to be removed and separately packaged. You may remove and package separately any battery that appears to be damaged or leaking. [Sec. 382.41(g)(2)]

When it is necessary to detach a battery from a wheelchair, you must provide packaging for the battery and package the battery consistent with appropriate hazardous materials regulations. [Sec. 382.41(g)(3)] You must not charge for such packaging. [Sec. 382.57]

You must not drain batteries. [Sec. 382.41(g)(4)]

If a passenger with a disability requests, you must stow a folding, breakdown, or collapsible battery-powered wheelchair in the cabin consistent with the requirements set forth above. If the wheelchair can be stowed in the cabin without removing the battery, then you must not remove

the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, then you must remove the battery and stow it in the baggage compartment in the proper packaging as set forth above. In this case, you must permit the wheelchair, with the battery removed, to be stowed in the cabin. [Sec. 382.41(g)(5)]

You must permit passengers with a disability to provide written instructions concerning the disassembly and reassembly of their wheelchairs. [Sec. 382.41(h)]

When you disassemble wheelchairs or other assistive devices for stowage, you must reassemble them and ensure their prompt return to the passenger with a disability. You must return a wheelchair or other assistive device to the passenger in the same condition in which you received it. [Sec. 382.43(a)]

On domestic flights, the normal baggage liability limits do not apply to loss, damage, or delay concerning wheelchairs or other assistive devices. Instead, the criterion for calculating the compensation for lost, damaged, or destroyed wheelchairs or other assistive devices must be the original price of the device. [Sec. 382.43(b)] Moreover, you must not require a passenger with a disability to sign a waiver of liability for damage to or loss of a wheelchair or other assistive device, although you may make notes about preexisting damage or conditions of wheelchairs or other assistive devices. [Sec. 382.43(c)]

Example: A passenger with a battery-powered wheelchair with a spillable battery arrived at his departure gate for his domestic flight and airline personnel there determined that the wheelchair could not be loaded, stored, secured, and unloaded in an upright position. Therefore, they directed the appropriate personnel to remove and store the battery and gate check the wheelchair. When the passenger arrives at his destination and the battery is replaced, it is done so incorrectly and the entire electronic circuit board of the wheelchair is severely damaged, rendering the wheelchair temporarily unusable. What should you do?

Upon request, you must permit passengers with a disability to provide written instructions concerning the disassembly and reassembly of their wheelchairs. As a matter of good customer service, you should apologize to the passenger for the problem and the resulting inconvenience. In addition, you should explain to the passenger that the carrier will compensate him for the damaged wheelchair in an amount up to the original purchase price of the device. If, for example, the passenger provides you with documentation that the original cost of the wheelchair was \$10,000 and verification that it cost \$2,900 to be repaired, the carrier would pay the passenger or the repair company \$2,900 to cover the cost of the wheelchair repair. In addition, paying for reasonable costs associated with the rental of

a wheelchair by the passenger during the repair period could also be recovered by the passenger from the carrier.

E. Services in the Cabin

Within the aircraft cabin, when requested by a passenger with a disability or when offered and accepted by a passenger with a disability, you must assist the passenger in:

- Moving to and from a seat as part of enplaning and deplaning [Sec. 382.39(b)(1)];
- Preparing for eating, such as opening packets and identifying food [Sec. 382.39(b)(2)];
- If there is an on-board wheelchair, using the on-board wheelchair to enable the passenger to move to and from the lavatory which, if requested, could entail transferring the passenger from a seat to an aisle chair [Sec. 382.39(b)(3)];
- Moving to and from the lavatory, if the passenger is semi-ambulatory, not involving lifting or carrying the individual [Sec. 382.39(b)(4)]; and
- Loading and retrieving carry-on items, including mobility aids and other assistive devices stowed in the cabin [Sec. 382.39(b)(5)];

Example 1: A passenger using a boarding wheelchair asks for help storing her carry-on item in the overhead compartment because, it is apparent, her disability limits her ability to reach up to the overhead compartment. What should you do?

You must either assist the passenger directly or indicate that you will find the appropriate employee to assist her in stowing her carry-on bag in the overhead compartment.

Example 2: A passenger who walks onto the plane for an evening flight with a rolling carry-on bag asks for help lifting his bag and putting it in the overhead storage compartment. What should you do?

Since he has not identified himself as a qualified individual with a disability, you may want to ask for further clarification. Because, under the law, normally you cannot ask a passenger if he has a disability, you might ask, "Is there any particular reason you need assistance sir?" or "Could you tell me a little about your need for help?" or "Are you unable to lift it yourself?" If, for example, the passenger explains that he has multiple sclerosis and his muscles are particularly fatigued at the end of the day and therefore he needs help lifting things, you must either assist the passenger directly or indicate that you will find the appropriate employee to assist him in stowing his carry-on bag. If, on the other hand, the passenger states that he is merely tired and doesn't feel like lifting the bag, the passenger is not a qualified individual with a disability and, therefore, you are not obligated to assist him. You may politely decline to assist him, depending on the carrier's policies regarding assistance with stowing carry-on items for passengers.

You are not required to provide extensive special assistance to passengers with a disability such as:

- Help with eating, for example, cutting food and feeding the passenger [Sec. 382.39(c)(1)];
- Assistance within the restroom or at the passenger's seat with elimination functions [Sec. 382.39(c)(2)]; or
- Provision of medical services. [Sec. 382.39(c)(3)]

You cannot require that a passenger with a disability sit on a blanket. [Sec. 382.55(b)]

F. Safety Briefings

Individual Safety Briefings

Under certain circumstances, you must provide individual safety briefings to a passenger with a disability. Federal safety regulations require you to conduct an individual briefing for each passenger who may need assistance to move expeditiously to an emergency exit. You must brief the passenger and the attendant, if any, on the routes to the appropriate exit and on the most appropriate time to move toward the exit in the event of an emergency. In addition, you must ask the passenger and the attendant, if any, the most appropriate manner of assisting the passenger. [14 CFR 121.571(a)(3)] You may offer such briefings to other passengers. [Sec. 382.45(b)(2)]

In the case of private safety briefings for passengers with a disability:

- You must conduct the briefing as inconspicuously and discreetly as possible. [Sec. 382.45(b)(3)]
- You must not require a passenger with a disability to demonstrate that the person has listened to, read, or understood the information presented, except to the extent that you or other employees impose such a requirement on all passengers with respect to the general safety briefing.
- You must not take any action adverse to a passenger with a disability on the basis the individual has not "accepted" the briefing. [Sec. 382.45(b)(4)]

Accommodations for Passengers Who Are Deaf or Hard of Hearing

If the safety briefings are presented to passengers on video screens, carriers must ensure that the video presentation is accessible to passengers who are deaf or hard of hearing. [Sec. 382.47(b)] More specifically, carriers must implement this requirement by using open captioning or an inset for a sign language interpreter as part of the video presentation. [Sec. 382.47(b)(1)] A carrier may use an equivalent non-video alternative to this requirement only if

neither open captioning nor a sign language interpreter inset could be placed in the video presentation without so interfering with it as to render it ineffective or if it would not be large enough to be readable. [Sec. 382.47(b)(2)] Carriers must implement these requirements by substituting captioned video materials for uncaptioned video materials as the uncaptioned materials are replaced in the normal course of the carrier's operations. [Sec. 382.47(b)(3)]

Timely and Complete Access to Information

Carriers must ensure that, upon request, passengers with a disability, including those who are (i) blind or visually impaired; or (ii) deaf, hard of hearing, or deaf-blind, have timely access to information being provided to other passengers, including but not limited to, information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, the checking and claiming of luggage, and aircraft changes that will affect the travel of passengers with a disability. [Sec. 382.45(c)] Passengers who are unable to obtain the information from the audio or visual systems in airports or on board must request the information from you. In other words, as a practical matter, passengers may have to identify themselves as (i) blind or visually impaired; or (ii) deaf, hard of hearing, or deaf-blind in order to obtain the information. See Chapter 7 in general and "Tips for Assisting People Who Are Blind or Visually-Impaired" and "Tips for Assisting People Who Are Deaf, Hard of Hearing, or Deaf-Blind" in particular.

Chapter 6: Assisting Air Travelers With Disabilities With Their Complaints

- A. Complaint Procedures and Complaints Resolution Officials (CRO's)
- B. Process to Resolve Complaints
- C. General Complaint Resolution Tips
- D. Recording, Categorizing, and Reporting Written Disability-related Complaints Received by Carriers

A. Complaint Procedures and Complaints Resolution Officials (CRO's)

Carriers must (i) establish a procedure for resolving disability-related complaints raised by passengers with a disability and (ii) designate at least one CRO to be available to handle disability-related complaints at each airport the carrier serves. [Sec. 382.65(a)] Each CRO must be trained and thoroughly proficient with respect to the rights of passengers with disabilities under the ACAA and accompanying regulations. [Secs. 382.61(a)(7) and 382.65(a)(3)] The

carrier must make a CRO available to any person who makes a disability-related complaint during all times the carrier is operating at an airport and should make that person aware of the existence of the Department of Transportation's aviation consumer disability hotline for resolving issues related to disability accommodations. The toll-free number for the hotline is 1-800-778-4838 (voice) and 1-800-455-9880 (TTY).

Availability of the CRO

Carriers must make a CRO available at all times the carrier is operating at each airport it serves. [Secs. 382.65(a)(1) and (2)] The CRO may be made available in person or by telephone. If the CRO is made available by telephone, it must be at no cost to the passenger. The CRO must be accessible via a TTY for passengers who are deaf or hard of hearing. If a passenger with a disability, or someone on behalf of a passenger with a disability, complains about an alleged violation or potential violation of the law, you must put the customer in touch with a CRO on duty. [Sec. 382.65(a)(1)] A CRO has the authority to resolve complaints by passengers with a disability on behalf of the carrier. [Sec. 382.65(a)(4)]

Complaints Made During the Trip

When a passenger with a disability makes a complaint to a CRO during the course of the trip (e.g., over the telephone or in person at an airport), the CRO must promptly take action to resolve the problem as follows:

- If no violation of the law has occurred yet, the CRO must take action or direct other employees to take action to ensure compliance. Only the pilot-in-command of an aircraft has final authority to make decisions regarding safety and the CRO cannot countermand a pilot's decisions regarding safety. [Sec. 382.65(a)(5)(i)]
- If a passenger complains about a disability-related issue or alleges a violation of the law that has already occurred and the CRO agrees that a violation has occurred, the CRO must provide the complaining passenger with a written statement summarizing the facts at issue and the steps, if any, the carrier proposes to take in response to the violation. [Sec. 382.65(a)(5)(ii)] This statement must be provided in person to the passenger at the airport, if possible; otherwise, it must be forwarded to the passenger within 10 calendar days of the complaint. [Sec. 382.65(a)(5)(iv)]
- If a passenger alleges a violation of the law but the CRO determines that no violation has occurred, the CRO must provide a written statement including a

summary of the facts and the reasons for the determination. [Sec.

382.65(a)(5)(iii)] This statement must be provided in person to the passenger at the airport, if possible; otherwise, it must be forwarded to the passenger within 10 calendar days of the complaint. [Sec. 382.65(a)(5)(iv)]

The written statement provided to the complaining passenger must include information about the right to pursue DOT enforcement action under the law. [Sec. 382.65(a)(5)(iv)]

Written Complaints Received After the Trip

You should be aware of your carrier's established procedure for resolving written complaints from passengers with a disability. [Sec. 382.65(b)] In addition, under the law, a carrier is not required to respond to a written complaint postmarked more than 45 days after the date of the alleged violation. [Sec. 382.65(b)(1)] Your carrier must provide a dispositive written response within 30 days of receipt of a written complaint describing a situation that would constitute a violation of the law. [Sec. 382.65(b)(3)]

You should provide all information regarding written complaints—and in general—in a polite and respectful manner as a matter of high standards of customer service.

Depending on the carrier's determination, its response to a written complaint must include the following:

- If the carrier agrees that a violation has occurred, the carrier must provide a written statement to the complaining passenger summarizing the facts and stating what steps, if any, the carrier proposes to take in response to the violation. [Sec. 382.65(b)(3)(i)]
- If the carrier denies that a violation has occurred, the written response must include a summary of the facts and the carrier's reasons under the law for making its determination. [Sec. 382.65(b)(3)(iii)]

The written statement provided to the complaining passenger must include information about the right to pursue DOT enforcement action under the law. [Sec. 382.65(b)(3)(iii)]

Responsibilities of Employees Other Than the CRO

You should be aware that all personnel dealing with the traveling public should be trained to proficiency regarding the legal requirements and the carrier's policies concerning the provision of air travel to individuals with disabilities. [Sec. 382.61(a)(1)] These employees must receive training regarding awareness about and

appropriate responses to individuals with physical, sensory, mental, and emotional disabilities. [Sec. 382.61(a)(2)]

You should be familiar with your carrier's established procedures and the CRO's duties and responsibilities with respect to resolving a complaint raised by a passenger with a disability. You should convey this information to passengers with a disability under the appropriate circumstances.

When resolving complaints from a passenger with a disability, you should keep the following in mind:

- Request assistance from a CRO immediately or assist the passenger with a disability in doing so, if the passenger requests to speak with a "supervisor" or "manager."
- Contact a CRO if you are having any difficulty providing an accommodation required by law or carrier policy to a passenger with a disability.
- Carry the information about how to contact a CRO with you at all times. Remember a CRO may be available in person or by telephone but a CRO must be available during all hours of the carrier's operation at the airport.

B. Process To Resolve Complaints

When you receive a complaint from a passenger with a disability, there are certain requirements under the law with which you, your carrier, and a CRO must comply. Even if you call a CRO, it is important to be able to assess the situation firsthand through observation, communication, and information gathering because a CRO is not always available on site and may only be involved in resolving the complaint via telephone.

Having a consistent process for fielding these complaints will assist you in complying with those legal obligations and providing good customer service. Learning what the particular problem is, finding the applicable rule, regulation, or policy that addresses the situation, and remedying the situation by taking affirmative action are important aspects of the process.

The ACCESS checklist set forth below provides an easy way to remember how to respond to these complaints. Remember ACCESS as a thorough and useful process through which you can address the complaint or refer it to a CRO as needed.

ACCESS

Ask the passenger with a disability how you may assist with concerns. Listen actively and carefully to what the passenger tells you and ask for further clarification when necessary.

Call a CRO and report the complaint if you are unable to resolve the problem. If a passenger with a disability would like to contact a CRO directly, you must assist the passenger in doing so. If your carrier has an internal procedure for documenting complaints that requires CRO involvement or for documenting other types of passenger complaints, fill out the appropriate forms, if any, and provide relevant and detailed information to satisfy that internal carrier policy.

Check this manual (and Appendix V containing the full text of part 382) and your carrier's policies (concerning the law as well as good customer service) to identify the issue at hand. If you need assistance, ask a CRO on duty.

Evaluate the relevant provisions of this manual (and Appendix V containing the full text of part 382) and your carrier's policies to determine the appropriate options for resolving the problem considering the following factors:

- Does the solution comply with the law?
- Does the solution comply with your carrier's policies?
- Is there a question of airline and passenger safety? (Remember, the pilot-in-command of an aircraft is the final arbiter of a safety issue.)
- Does the solution meet the needs of the passenger with a disability?
- Can the solution be implemented in a timely manner, *e.g.*, to help the passenger with a disability make the flight or receive the accommodation?

Solve the problem by providing the passenger with a disability with the information, services, or appropriate action required under the law.

Satisfy the passenger with a disability to the extent possible when complying with the law. Communicating the basis for the action taken (or not taken) to the passenger with a disability is critical.

Thank the passenger for bringing the problem to your attention and ask if the passenger has any additional questions about the solution you or a CRO has provided. Ask if you are able to assist with any other concerns.

C. General Complaint Resolution Tips

- You should familiarize yourself with this manual (and Appendix V containing the full text of part 382) and your carrier's policies (concerning the law as well as good customer service). First and foremost, you must not violate the civil rights of passengers with a disability. In addition, you should treat passengers in a manner consistent with good customer service policy.

- You should work as quickly as possible to ensure prompt service and, at the same time, respect for the needs of passengers with a disability.

- You should be aware of your carrier's procedures for addressing complaints. You should take the time necessary to resolve the complaint while maintaining flight schedules. If an unfamiliar situation presents itself or you have any doubts or questions, you should contact your immediate supervisor or a CRO for prompt resolution of the issue.

- You should make reasonable attempts to keep the passenger with a disability informed about your or other carrier personnel's progress with respect to resolving a complaint.

- You should avoid engaging in an argument with a passenger with a disability presenting a complaint.

- You should listen carefully and actively, evaluate appropriate options under the law and your carrier's policy, and communicate the basis for the action taken (or not taken) to the passenger with a disability in a respectful and polite manner to ensure effective complaint resolution.

- Even if you call a CRO, it is important to be able to assess the situation firsthand through observation, communication, and information gathering because a CRO is not always available on site and may only be involved in resolving the complaint via telephone.

D. Recording, Categorizing, and Reporting Written Disability-Related Complaints Received by Carriers

Certificated U.S. carriers and foreign carriers¹ operating to, from, and in the United States using at least one aircraft with more than 60 passenger seats must record, categorize, and report written disability-related complaints received by the carrier to DOT on an annual basis. [Secs. 382.70(b) and (c)] The first annual report covers calendar year 2004 and was due to be submitted to DOT by January 25, 2005. [Sec. 382.70(d)] In addition, carriers must use the form specified in Appendix A to part 382 when making the annual report to DOT. See Appendix V. Carriers must develop a system for recording and collecting data regarding specific categories of written disability-related complaints that they receive according to the type of disability and the nature of the complaint. [Sec. 382.70(c)]

Chapter 7: Interacting With People With Disabilities

When assisting and interacting with individuals with disabilities, you should use language that gives an accurate, positive view of them. You should focus on the person first, not the disability, and avoid language that reinforces myths, stereotypes, and discrimination.

Below is a chart listing some currently acceptable terminology and terminology to avoid when addressing or referring to people with disabilities.

Use	Avoid
Person with a disability	Handicapped or deformed.
Person who is deaf	The deaf.
Person who is blind or visually-impaired	The blind; the visually-impaired.
Woman with an emotional disorder, psychiatric illness, or psychiatric disability.	Crazy, demented, lunatic, psycho, or maniac.
Person using a wheelchair, wheelchair user	Confined to a wheelchair, wheelchair bound, or crippled.
Person with AIDS or living with AIDS	Afflicted with AIDS, victim of AIDS, or suffers from AIDS.
Congenital disability	Birth defect.
Man who has cerebral palsy	Afflicted with cerebral palsy or suffers from cerebral palsy.
Woman who has Down syndrome	Mongol, mongoloid, or retarded.
Person with head injury, people who have sustained brain damage, or woman who has traumatic brain injury.	Brain damaged.
Person who has a speech disorder or woman without speech	Mute or dumb.
Man with quadriplegia or woman who is paralyzed	Crippled.
Person of small or short stature	Dwarf.
Nondisabled	Normal, able-bodied, healthy, or whole.

¹ Foreign carriers are covered by this section only with respect to disability-related complaints

associated with any flight segment originating or terminating in the United States. [Sec. 382.70(b)].

It may not be apparent whether a person is an individual with a disability. You should provide an opportunity for a passenger to self-identify as an individual with a disability by asking if the person needs assistance and, if so, how best you can assist with those needs. Keep in mind that you cannot require an individual with a disability to accept special services, including pre-boarding.

Some Examples of Physical Impairments [Sec. 382.5(a)(1)]

- Orthopedic impairment;
- Deafness (profound hearing loss);
- Hard of hearing (mild to profound hearing loss);
- Vision impairment and blindness;
- Speech disorder;
- Cerebral palsy;
- Epilepsy;
- Muscular dystrophy;
- Multiple sclerosis;
- Cancer;
- Heart disease; and
- Diabetes.

Some Examples of Mental or Psychological Impairments [Sec. 382.5(a)(2)]

- Mental retardation;
- Depression;
- Anxiety disorders;
- Specific learning disabilities; and
- Brain injury.

Below is a list of general tips to consider when interacting with people with disabilities followed by tips relating to interacting with individuals with one or more of the five basic types of disabilities. These tips are aimed at ensuring that services, facilities, and other accommodations are provided to passengers with disabilities in a respectful and helpful manner.

Some of the tips relate to specific legal requirements, but most of them set forth suggestions for interacting in a way that would constitute good customer service and demonstrate a sensitivity to the issues concerning passengers with disabilities. The following tips should be read and employed with the above qualification in mind.

General Tips for Interacting With Individuals With Disabilities

- *Always ask.* The most effective and simplest step for you to take when you are uncertain about a passenger's needs is to ask, "May I assist you?" or "Please let me know how I can assist you." A passenger with a disability has the most information about his or her abilities, level of familiarity with the airport and airline, and needs when traveling.
- *Appreciate the passenger's perspective.* Take into consideration the

extra time and energy that traveling may require for a person with a disability. For example, you should realize that a person with a disability may not have the flexibility and spontaneity to react to unexpected situations. Understand that making adjustments may take more time or may require additional attention or services for passengers with a disability.

- *Be yourself and be self-aware.* It is important to relax, be yourself, and maintain the conversational style you would use for anyone else when you are speaking with a person with a disability. Be aware of the possibility that your body language could convey discomfort or impatience; try to avoid this. Also, respect the privacy of individuals with disabilities. Asking about a person's disability can be perceived as intrusive and insensitive. It might be interpreted as placing the disability above the human being.

- *Don't make assumptions.* Don't assume that all individuals with a disability automatically need assistance. Keep in mind that if the setting is accessible, individuals with a disability would usually prefer to operate independently.

- *Emotions matter.* Acknowledge the emotions of the person in a stressful situation, e.g., frustration or disappointment. When acknowledging the emotions of others, it may be more effective to use "you" rather than "I." For example, use, "You must be frustrated by having to wait for your checked wheelchair." Not, "I completely understand how you feel, I had to wait forever at a supermarket check-out yesterday."

- *Focus on the person, not the disability.* The emphasis is on the person first, not the disability.

- *Keep the passenger informed.* When providing an accommodation to a passenger with a disability, keep the passenger updated about the progress or timing in connection with such accommodation.

- *Knowledge is useful.* Be aware of the services, information, and resources available to a person with a disability who asks about a particular accommodation. If you don't know the answer to the question, treat the individual with respect and courtesy and say, "Let me find out for you." Don't make guesses about what accommodations or services to provide a person with a disability. When explaining requirements under the law to a passenger with a disability, avoid rendering legal advice or counseling the person in any way.

- *The passenger is the expert.* Offer assistance only if the passenger appears

to need help. If the passenger asks for help, ask how you can assist and listen to the passenger's response and instructions before you act. If you have any doubts as to how to assist a passenger with a disability, you should ask the passenger for guidance before acting. Avoid being overly enthusiastic about helping and always think before you speak and act when offering assistance.

- *Respect personal space.* Be sensitive about physical contact. Avoid patting an individual with a disability or touching the individual's wheelchair or cane. People with disabilities consider their assistive devices to be part of their personal space.

- *Speak directly to the passenger.* Always make eye contact and speak directly to a person with a disability, not the person's companion, attendant, or interpreter.

- *Treat each passenger as an individual.* It is important to recognize that people with disabilities may vary in their ability to perform certain tasks. Individuals with a disability are best able to assess and gauge what they can and cannot do in a particular situation.

It is always important to keep the above tips in mind when assisting and communicating with passengers with disabilities. As a practical matter though, you will need to be aware of different considerations depending on the type of disability the passenger self-identifies as having.

Below are five basic types of disabilities with a list of considerations to keep in mind when you are communicating with and accommodating passengers with each type of disability. Even though these five types of disabilities are set forth here, each passenger with a disability should be considered as an individual with individual needs. It is important for you to communicate with each passenger about that particular passenger's needs under the circumstances and to avoid making assumptions about the passenger's needs. The five basic types of disabilities addressed below are: People who are blind or visually-impaired; people who are deaf, hard of hearing, or deaf-blind; people with mobility disabilities; people who have difficulty speaking, and people with disabilities that are not apparent (e.g., a cognitive or emotional disability, diabetes, etc.).

Tips for Assisting People Who Are Blind or Visually-Impaired

Communication

- Only offer assistance if it seems appropriate. Ask the person if you can

be of assistance and, if so, how you can help.

- Identify yourself by name and job responsibility first.
- Always communicate using words rather than relying on gestures, facial expressions, or other nonverbal communication. For example, tell the passenger the gate number and the directions to get to the gate. If you are handing a boarding pass to a blind passenger, explain that you have the person's boarding pass and that you would like to place it directly in the person's hand. Always communicate in words what you are doing, *e.g.*, waiting to receive confirmation of a reservation, and identify any items you are giving to the passenger, *e.g.*, a credit card, tickets, voucher, etc.
- Make sure a passenger who is blind is made aware of all relevant information as it becomes available to all passengers. For example, if a boarding time is changed and the new boarding time is posted visually at the gate, you must inform the person orally. Advise the passenger when you are leaving the area and answer any questions the person has before you do.
- If individual safety briefings are required, conduct them discreetly with respect for the privacy of the person who is blind or visually-impaired.
- If a person uses a term relating to the condition of being blind or visually-impaired that you are not familiar with or that you don't understand, ask the person to tell you what his or her needs are. If you need additional information, you should contact the CRO to discuss how best to proceed. In addition, be aware that your carrier may provide additional training to educate you about the different types of disabilities in order to enhance your ability to accommodate passengers with disabilities.
- Keep in mind that the special service request (SSR) field of the passenger name record (PNR) may contain information concerning a passenger who is blind or visually impaired.

Guiding a Person

- Never take the arm of a person who is blind without asking first, because the person could lose balance. In addition, if you don't ask first, the person who is blind could perceive a lack of respect because he or she was not given the option of receiving the assistance. Once you ask if you can offer your arm, let the person who is blind take it. You may direct the person's arm to a railing or the back of a chair to assist with seating.
- Walk approximately a half step ahead of the person if you are serving

as a guide through the terminal. When encountering stairs, escalators, moving walkways, revolving doors, etc., give the person who is blind the option to choose whether to use the facility or conveyance. For example, you might say, "We can just keep walking or use the moving sidewalk. Which would you prefer?" Never assume that a person who is blind cannot use these devices because of blindness. Instead, offer the individual the freedom and flexibility to choose which devices and facilities he or she would like to use. Describe the environment in detail as you go and ask the person if he or she would like you to point out airport amenities such as restaurants, shops, ATM machines, restrooms, airline club lounges, displays, or other terminal facilities. Note any obstacles and their location in your path. If you need to provide a warning, be as specific as possible. Offer to orient the person to the gate or other terminal area in case he or she would like to walk around, *e.g.*, you could say, "All even numbered gates are on our right when walking from security and odd numbered gates are on the left."

- When you are done guiding the person to his or her destination, ask him or her if any other assistance is needed. Only if the person who is blind has requested should you inform other passengers or carrier personnel of the individual's need for additional assistance.
- Be aware that many people who are blind prefer to walk rather than use wheelchairs, electric carts, etc. You may not require a person who is blind to use a wheelchair and, if requested, you must provide a walking guide for the person who is blind.

Service Animals and Assistive Devices

- Never pet or distract a service animal accompanying a person who has a disability. Don't separate passengers who are blind from their service animals.
- Don't move a person's cane or assistive device if the person has placed it on the ground near a seat. If you ask and receive permission, you may help the passenger collect things if need be, *e.g.*, carry-on items, jackets.

Tips for Assisting People Who Are Deaf, Hard of Hearing, or Deaf-Blind

Communication

- Remember that people who are deaf, hard of hearing, or deaf-blind have various ways of communicating, *e.g.*, sign language, speech/lip reading, TTY, hearing aid or implant. A person's deafness can go unnoticed unless the

person self-identifies as a person who is deaf, hard of hearing, or deaf-blind.

- When speaking, look directly at the person who is deaf or hard of hearing. The person may use speech/lip reading as a method of communicating. Use normal lip movement. Use a normal tone of voice when speaking to a person who is deaf or hard of hearing. Don't shout because shouting distorts the sound, words, and lip movement. Sometimes you may need to rephrase your message because many words have the same lip movement, *e.g.*, 15 and 50 have the same lip movement. If writing a note, make the message short and simple.
- Identify yourself by name and job responsibility first.
- If individual safety briefings are required, conduct them discreetly with respect for the privacy of the person who is deaf, hard of hearing, or deaf-blind.
- Make sure a passenger who is deaf, hard of hearing, or deaf-blind receives all relevant information as it becomes available to all passengers. For example, if a boarding time is changed and the new boarding time is announced, you must inform the person through an accessible method of communicating.
- If a person uses a term relating to the condition of being deaf, hard of hearing, or deaf-blind that you are not familiar with or that you don't understand, ask the person to tell you what his or her needs are. If you need additional information, you should contact the CRO to discuss how best to proceed.
- A deaf-blind person may communicate through the printing on palm method, an alternative to using sign language. This method involves "writing" with your fingertip on the palm of the deaf-blind person's hand. Use the fleshy part of your fingertip, not your nail. Always use all upper case letters and use the same reference point for each letter. More specifically, hold the deaf-blind person's hand the same way each time, so the top and bottom letter falls in the same place. Make sure the words you print are "right side up" for the person receiving the message. Write as large as possible and start in the upper left for a "W" and finish in the upper right. Use the entire palm area for each letter. Use one stroke for both the letter "I" and the number "1". The difference will be obvious from the context of what you are spelling. When you finish a word, "wipe it off" using the palm of your hand. This action indicates that you have finished one word and you are beginning a new word.

- Keep in mind that the special service request (SSR) field of the passenger name record (PNR) may contain information concerning a passenger who is deaf, hard of hearing, or deaf-blind.

Guiding a Person Who Is Deaf-Blind

- Touch the person gently and offer your arm. Let the person take your upper arm near your body; this way he or she can feel the change in gait as you approach different barriers and prepare for them. Don't take or grab the arm of the person who is deaf-blind (particularly the arm with which the person is holding a cane or guide dog harness) and don't push him or her along. If the person has a guide dog, go to the side opposite the service animal and offer your arm (usually the person's right side). Remember the person who is deaf-blind cannot hear you. Therefore, information regarding obstacles, stairs, etc. must be given tactually. Deaf-blind people often have poor balance so it is helpful to offer a steady hand to aid in orientation. Never leave a deaf-blind person in an open space, place his or her hand on a wall, post, railing, or whatever is available.

Service Animals

- Never pet or distract a service animal accompanying a person who has a disability. Don't separate passengers who are deaf, hard of hearing, or deaf-blind from their service animals.

Tips for Assisting People Who Have Mobility Disabilities

Communication

- If a person uses a term to describe a mobility disability that you are not familiar with or that you don't understand, ask the person to tell you what his or her needs are. If you need additional information, you should contact the CRO to discuss how best to proceed.

- If individual safety briefings are required, conduct them discreetly with respect for the privacy of the person with a mobility disability.

- When having a long conversation with a person who is using a wheelchair, stoop down or sit nearby so that you are closer to eye level.

Wheelchairs and Other Assistive Devices

- Be aware of the types of wheelchairs and assistive devices used by people with mobility disabilities when traveling. You must be able to provide information to people about the different types of wheelchairs, services, and other equipment provided or

accommodated by your carrier on the particular flight.

- Understand the proper function and storage of the different types of wheelchairs and assistive devices. Ask the person with the mobility disability the best way to handle the device.

- Consider keeping information handy about businesses providing wheelchair repair in the area in case a person with a mobility disability needs the information.

Assisting With Transfers and Movement Through Terminal

- If you must transfer a person with a mobility disability from an aisle chair to a seat on the aircraft, or perform any other kind of transfer, explain the transfer procedures and listen to any instructions or preferences from the person before undertaking the transfer.

- Be aware that, under the law, you can never physically hand-carry a person with a mobility disability (even if both of you are willing) except in an emergency evacuation situation.

- When providing transportation between gates, ask the person with the mobility disability if the person would prefer to be pushed or not. If the answer is yes, use elevators and avoid escalators and moving walkways. When maneuvering through the terminal, say, "Excuse us." Not, "Excuse me."

- Be aware that, under the law, carriers are not permitted to charge passengers with disabilities for services or equipment required by part 382. If, however, a passenger with a disability voluntarily offers to tip you for providing a service, you should consult your carrier's policy to determine whether you can accept it.

Service Animals

- Never pet or distract a service animal accompanying a person who has a mobility disability. Don't separate passengers with a mobility disability from their service animals.

Tips for Assisting People Who Have Difficulty Speaking

Communication

- Ask the person how he or she prefers to communicate.
- A pencil and paper may be okay for short conversations.

- If you do not understand something that is said, tell the person you don't understand and ask the person to repeat.

- Be patient, it may take a while to communicate.

- Let the individual speak without attempting to finish his or her sentence.

- To obtain information quickly, ask short questions that require brief "yes" or "no" answers.

- Don't shout.
- Difficulty speaking does not indicate a lack of intelligence.

Tips for Assisting People Who Have Disabilities That Are Not Apparent

Communication

- Do not make assumptions about the needs of people if their behavior appears to be unusual to you. Cognitive disabilities may cause people to reason, draw conclusions, or respond more slowly. People with cognitive disabilities may appear easily distracted. Depending upon the disability, the person may understand materials in written form or through a verbal explanation. They may also find the background noise of a busy airport terminal extremely distracting.

- Disregard any speech impairments or physical tics by being patient and aware of your own body language and facial expressions that could convey your own discomfort.

- If individual safety briefings are required, conduct them discreetly with respect for the privacy of the person with a disability that is not apparent. Similarly, if there is a concern that the person is not medically stable enough for air travel, conduct the inquiry in a discreet manner and involve the CRO, if necessary.

- If a person with a disability that is not apparent uses a term to describe a disability that you are not familiar with or that you don't understand, ask the person to tell you what his or her needs are. If you need additional information, you should contact the CRO to discuss how best to proceed.

Service and Emotional Support Animals

- Be aware that people who have disabilities that are not apparent may travel with emotional support animals or other service animals. Never pet or distract a service animal accompanying a person who has a disability that is not apparent. Don't separate passengers from their service or emotional support animals.

Indices

[A PDF copy and a Microsoft Word copy of the Technical Assistance Manual containing an Alphabetical Index and a Part 382 Index are available on the World Wide Web at <http://airconsumer.ost.dot.gov/>]

Appendix I

Tips for Air Travelers With Disabilities

There are some commonly used accommodations, facilities, and services that carriers are required to make available to passengers with disabilities. Appendix I sets forth a list of tips or general guidelines for

air travelers with disabilities to keep in mind that relate to these commonly used accommodations, facilities, and services. Therefore, the "you" referred to herein is an air traveler with a disability or air travelers with disabilities. Below are some specific tips.

Ask Questions and Provide Instructions

Know what to ask carrier personnel. You can ask for and carrier personnel must be able to provide information about aircraft accessibility, seating and movable armrests, lavatory accessibility, boarding options, and storage facilities on board, among other things.

Although advance notice is not generally required, understand that providing detailed information about the accommodations you need in advance of travel will assist carrier personnel in providing those accommodations in a correct and timely manner.

If you are transferring planes, you may want to investigate whether your trip involves more than one carrier. If so, contact each carrier to determine whether it is able to fully accommodate you. Keep in mind that carriers might provide such optional accommodations on their "mainline" flights only, not on the flights operated by their smaller code-share affiliates. For example, some carriers do not provide medical oxygen on board. Don't assume that by communicating with the carrier for the first leg of your trip, other carriers handling the rest of the journey are fully briefed and able to accommodate you. Similarly, when booking reservations online, you may want to consider contacting each carrier by telephone to determine the carrier's individual policies and to provide and receive specific information to ensure your needs are met for each leg of your journey.

If you are receiving assistance with transportation between gates by ground wheelchair, remember to instruct the personnel assisting you on your specific needs, *e.g.*, whether or not you would like the airline employee or contractor to push you and the ground wheelchair through the terminal. Although in most instances you are not obligated to self identify as a passenger with a disability, keep in mind that conveying certain information or providing some guidance will permit carrier personnel to assist you better.

Directing carrier personnel to remove footrests (if possible) and other removable parts of personal wheelchairs and stow them in the cabin may help to reduce the potential for damage to the wheelchair while it is stowed in the cabin or in the cargo hold.

Boarding Assistance

When communicating to carrier personnel about your need for boarding assistance, be as specific as possible about the type or level of boarding assistance you require. More specifically, if, for example, you are completely immobile, ask carrier personnel to provide a wheelchair to transport you to and from the gate, a lift (if necessary), and assistance transferring from an aisle chair to a seat. If, for example, you are able to walk short distances, but cannot ascend and

descend steps, ask carrier personnel to provide a wheelchair for longer distances to and from the aircraft and a lift (if necessary). If, for example, you can ascend and descend stairs and can walk shorter distances but have difficulty walking longer distances, ask carrier personnel to provide a wheelchair or electric cart for longer distances to and from the aircraft.

Carrier personnel are not permitted to physically hand-carry a passenger with a disability on or off a plane, except in the case of an emergency evacuation. Keep in mind that if none of the options for boarding a particular flight is acceptable to you, you may have to wait for another flight or alter your travel plans.

Carrying Assistive Devices and Keeping Them Near You

Carrying medicine or other assistive devices like syringes as a carry-on item that you may need in the case of a flight cancellation or a missed flight may be a good idea. At times, passengers get separated unexpectedly from checked baggage. If you do decide to carry medication or other assistive devices with you on board, the items cannot be counted towards your carry-on baggage limit.

You are entitled to keep your assistive device near you on board as long as it does not interfere with safety requirements.

Carry Information and Useful Documentation

Bringing photocopies of instructions about the assembly and disassembly of wheelchairs and other assistive devices when you access air transportation may be a good idea. You can provide that information to carrier personnel storing or checking your wheelchair or assistive device. Attaching a laminated set of brief instructions to a wheelchair itself may also be a good idea in the event that your wheelchair is disassembled or reassembled in a secure area to which you do not have access.

Bringing photocopies of receipts, warranties, or other product information concerning a wheelchair or assistive device may be useful if the item is lost or damaged in transit. It might help with locating a repair option or processing a claim for liability against the carrier responsible for the loss or damage.

Complaints

Be aware that a Complaint Resolution Official (CRO) must be made available to you if you ask to speak with a manager or supervisor about a disability-related complaint. A CRO may be made available in person or by telephone. Passengers who are deaf or hard of hearing must be permitted to communicate with a CRO via a TTY on request.

If you make a written complaint, you should state whether a CRO was contacted when the matter arose and, if so, include the name of the CRO and the date of the contact, if available, and any written response received from the CRO.

Familiarize Yourself With the Law

Knowledge of the Air Carrier Access Act (ACAA) and its implementing regulations (14

CFR part 382) will permit you to be able to ask the right questions and share the most useful information with carriers. Some passengers with disabilities bring a copy of the regulations with them when they access air transportation in order to have the primary resource close at hand. Carriers must maintain a copy of the regulations at each airport they use. Therefore, if you are at an airport and have a question about the regulations, you may ask to review them and the carrier must provide them.

Individual Safety Briefings

You may receive an individual safety briefing under certain circumstances. If so, you should be provided an accessible safety briefing and it must be performed in a discreet manner. Keep in mind that you may need to provide information to carrier personnel to ensure that the individual safety briefing is accessible to you.

Limitations on Accommodations

Carrier personnel are expressly prohibited from performing certain tasks. For example, carrier personnel cannot physically hand-carry you on or off an airplane except in an emergency evacuation. In addition, while on board, carrier personnel are not required to administer medication to you, feed you, or accompany you into the lavatory to assist you.

Pre-Boarding as an Option

Although you are not required to pre-board, choosing to take advantage of a pre-boarding opportunity may assist you in securing a seating accommodation when a carrier does not provide advance seat assignments. In this situation, as a passenger with a disability, you may choose to pre-board before all other passengers. You can select a seat that best meets your needs if you have taken advantage of the opportunity to pre-board.

Pre-boarding may also permit you to secure the allotted stowage for your wheelchair or assistive device or it may permit easier access to overhead compartments if you are stowing your assistive device or parts of your wheelchair onboard.

Safety Always Considered

You should keep in mind that carriers are obligated to take the safety of all passengers into consideration when making decisions about accommodations for passengers with disabilities. At times, safety requires placing certain limitations on accommodations, *e.g.*, a service animal cannot block the aisle or an exit.

Seating Assignments

When requesting a particular seat assignment, it is useful to be as specific as possible about the type of seat that will meet your needs as a passenger with a disability. For example, instead of merely asking for an "accessible" seat, it is more helpful to provide some details about your specific needs, *e.g.*, ask for a bulkhead seat or an aisle seat with a movable armrest. This way, carrier personnel can determine the most appropriate seating accommodation for you.

Service Animals

It is not required under the law to provide advance notice if you are traveling with a service animal. However, in order to guarantee your seat assignment, you should be aware that, depending on whether the carrier provides advance seat assignments and the type of seating method it uses, it may have a policy requiring passengers with a disability (i) to request a particular seat assignment 24 hours in advance of the departure of the flight or (ii) to check in at least an hour before the departure of the flight. Carriers are obligated to make a good faith effort to accommodate you and your service animal regardless of whether you comply with the carrier's advance seat assignment policy and/or advance check-in requirement. Keep in mind that requesting your seat assignment well in advance of the flight may permit you to secure the specific seat assignment you would like with the least amount of waiting, inconvenience, or hassle to you.

Resources for Air Travelers With Disabilities

DOT Web Site

DOT posts useful information for all consumers, including air travelers with disabilities, on its Web site at <http://airconsumer.ost.dot.gov>. Click on "Travel Tips and Publications." The following publications are useful for air travelers with disabilities: Plane Talk—Passengers with Disabilities, Fly Rights, and New Horizons: Information for the Air Traveller With a Disability.

Air travelers with disabilities can also access recent DOT enforcement orders to review DOT determinations involving the ACAA and part 382 by going to <http://www.dot.gov> and clicking on "Dockets and Regulations." See Appendix III for additional instructions for searching this data base of DOT enforcement orders and for a chart listing those enforcement orders related to the ACAA.

DOT Hotline

The toll free telephone hotline system that provides general information about the rights of air travelers with disabilities, responds to requests for information, and assists air travelers with time-sensitive disability-related issues. Members of the public may call 1-800-778-4838 (voice) or 1-800-455-9880 (TTY) from 7 a.m. to 11 p.m. Eastern time, seven days a week, to receive assistance regarding air travel by individuals with disabilities.

Carriers' Web Pages and Reservations Personnel

Always check these resources when seeking information about services and equipment when accessing air transportation.

Appendix II

Airline Management-Related Issues

Appendix II highlights provisions of the ACAA and the accompanying regulations outlining specific responsibilities of management of carriers, *i.e.*, requirements to be implemented by management employees as opposed to personnel who deal with the

traveling public, including passengers with a disability. In places, these are overlapping responsibilities and cross-references will be made to specific sections of this manual.

Discrimination Is Prohibited

Management of carriers are required to ensure that the carrier (either directly or indirectly through its contractual, licensing, or other arrangements for provision of air transportation) does not discriminate against qualified individuals with a disability by reason of such disability. [Sec. 382.7(a)(1)] In addition, management of carriers should be aware that they are responsible for compliance with the ACAA and part 382 not only by their *own* employees, but also by employees of any company or entity performing functions on behalf of the carrier.

More specifically, carriers cannot require a passenger with a disability to accept special services, *e.g.*, pre-boarding, not requested by the passenger. [Sec. 382.7(a)(2)] Carriers cannot exclude a qualified individual with a disability from or deny that individual the benefit of air transportation or related services that are available to other individuals, even if there are separate or different services available for passengers with a disability, except as provided by the ACAA and part 382. [Sec. 382.7(a)(3)] Carriers cannot take actions adverse to passengers with a disability if they assert their rights under the ACAA and part 382. [Sec. 382.7(a)(4)]

Carriers cannot limit the number of passengers with a disability on a given flight. [Sec. 382.31(c)] Carriers must modify policies, practices, and facilities as necessary to ensure nondiscrimination consistent with the standards of Section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program. [Sec. 382.7(c)]

Refusal of Transportation

Carriers cannot refuse transportation to a qualified individual with a disability solely because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience others. [Sec. 382.31(b)] Carriers must not refuse to provide transportation to a passenger with a disability on the basis of his or her disability unless it is expressly permitted by the ACAA and part 382. [Sec. 382.31(a)]

Safety Considerations

The ACAA does not require air carriers to disregard applicable FAA safety regulations. [Sec. 382.3(d)]

Carriers may refuse to provide transportation to any passenger on the basis of safety and if carriage would violate FAA regulations. However, when carriers exercise this authority, they must not discriminate against a passenger with a disability on the basis of disability. [Sec. 382.31(d)]

Written Explanation for Refusal of Transportation

When a carrier refuses to provide transportation to a passenger on a basis relating to disability, the carrier must specify in writing to the passenger the basis for the

determination within 10 days of the refusal of transportation. [Sec. 382.31(e)] In the situation where refusal of transportation is based on safety concerns, the written notice must include the carrier's reasonable and specific basis for its opinion that transporting the passenger would be inimical to the safety of the flight.

No Charge for Accommodating Passengers With a Disability

Carriers cannot impose charges for providing facilities, equipment, or services that are required by the ACAA and its accompanying regulations for passengers with a disability. [Sec. 382.57]

Indirect Air Carriers

If an indirect air carrier provides facilities or services for passengers that are covered for other carriers by sections 382.21 through 382.55, the indirect air carrier must do so in a manner consistent with those regulations. [Sec. 382.7(b)]

Contractors and Travel Agents

Carriers must receive assurances from their contractors who provide services, including travel agents (except non-U.S. citizens providing services outside the U.S.), that they will not discriminate on the basis of disability when providing such services and include a clause with that assurance in their contracts. [Sec. 382.9(a)] Similarly, their contracts must contain a clause stating that contractor employees will comply with directives issued by CROs. [Sec. 382.9(b)]

Accessibility of Airport Facilities

All terminal facilities and services owned, leased, or operated by a carrier at a commercial service airport, including parking and ground transportation, must comply with the Standards for Accessible Design under the Americans with Disabilities Act. [Sec. 382.23(e)] See also 49 CFR part 37, Appendix A. Carriers must ensure that these terminal facilities and services are accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.¹ [Sec. 382.23(b)] For example, carriers must ensure that there is an accessible path between the gate and the boarding area. [Sec. 382.23(c)]

Contracts or leases between carriers and airport operators concerning the use of airport facilities must set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by law. [Sec. 382.23(f)]

Carriers must not (i) restrict the movements of individuals with disabilities in terminals; (ii) require them to remain in a holding area or other location in order to receive assistance; or (iii) mandate separate treatment for individuals with disabilities except as required or permitted under part 382. [Sec. 382.55(c)]

¹ Compliance with the requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA) is sufficient for compliance under the ACAA and part 382 with respect to airport terminal facilities and services. [Sec. 382.23(b)]

Advance Notice and Reservation System

Carriers' reservation and other administrative systems must ensure that when advance notice is provided by a passenger with a disability as provided by the ACAA and its implementing regulations (see Ch. 3, Section A), the notice is recorded and properly transmitted to operating employees responsible for providing the accommodation about which notice was provided. [Sec. 382.33(d)]

Service Animals

Regardless of your carrier's policies with respect to pets, carriers are required by law to permit passengers with a disability to be accompanied by service animals in the cabin. [Sec. 382.55] See also Ch. 3, Section D and Appendix VI.

Aircraft Accessibility

When considering ordering, purchasing, or leasing aircraft, management of carriers should keep in mind that the following features are required for aircraft *ordered by* the carrier after April 5, 1990, or *delivered to* the carrier after April 5, 1992. In addition, different size airplanes must be equipped with different features according to the law. For example, aircraft with:

- 30 or more passenger seats must have movable aisle armrests on at least half of the aisle seats where it is feasible and it does not interfere with safety [Sec. 382.21(a)(i) and (ii)];
- 100 or more passenger seats must have priority storage space within the cabin to stow at least one passenger's folding wheelchair [Sec. 382.21(a)(2)] and DOT has interpreted that to mean a space at least 13 inches wide, 36 inches high, and 42 inches long;
- More than one aisle in which lavatories are provided must include at least one lavatory accessible to passengers with a disability accessing the lavatory with an on-board wheelchair [Sec. 382.21(a)(3)];
- More than 60 passenger seats having an accessible lavatory must be equipped with an on-board wheelchair [Sec. 382.21(a)(4)(i)]; and
- More than 60 passenger seats having an inaccessible lavatory must be equipped with an on-board wheelchair when a passenger with a disability informs the carrier (providing advance notice under Sec. 382.33(b)(8)) that he/she can use an inaccessible lavatory but cannot reach the lavatory from his or her seat without the use of an on-board wheelchair. [Sec. 382.21(a)(4)(ii)]

Requirements relating to retrofitting and replacing features to ensure accessibility as well as providing on-board wheelchairs are covered by other specific provisions. [Secs. 382.21(b) and (c)] However, any replacement or refurbishing of the aircraft cabin must not reduce existing accessibility to a level below that specified under the law. [Sec. 382.21(e)] Carriers must maintain aircraft accessibility features in proper working order. [Sec. 382.21(f)]

Seating Accommodations

Under certain circumstances, if a passenger self-identifies as a passenger with a

disability, carriers must provide seating accommodations. [Sec. 382.38(a)] In order to provide these seating accommodations and other seat assignment requests from passengers with a disability, carriers may implement a reservation system to provide for advance seat assignments. If a carrier provides advance seat assignments, it may employ either the seat "blocking" method or the "priority" seating method. Each method requires some advance notice on the part of the passenger with a disability in order to guarantee the seating accommodation. [Secs. 382.38(b) and (c)]

Management of carriers should select an adequate reservation system to meet its needs, ensure proper administration of the reservation system, and provide employee training with respect to the reservation system and the requirements under the law for providing seating accommodations for passengers with disabilities.

If carriers do not employ a system for advance seat assignments, if a passenger with a disability self-identifies, the passenger must be allowed to pre-board the aircraft and select a seat to accommodate a disability. [Sec. 382.38(d)]

Carriers are not required to provide more than one seat per ticket or a seat in a class of service other than the one the passenger has purchased to accommodate a passenger with a disability in need of a seat assignment to accommodate his or her disability. [Sec. 382.38(i)]

Carriers must comply with all FAA safety requirements in responding to requests from individuals for seat assignment accommodations. [Sec. 382.38(j)]

Services and Equipment

Boarding Assistance in General

If a passenger with a disability requests assistance getting on an airplane or carrier personnel offer assistance and the passenger consents, a carrier must provide such assistance with boarding. [Sec. 382.39(a)] The type of assistance carriers must offer includes, as needed, services personnel and the use of wheelchairs, ramps, or mechanical lifts. [Sec. 382.39(a)(1)]

Carriers must provide access to the airplane for passengers with a disability by level-entry loading bridges or accessible passenger lounges where these means are available. [Sec. 382.39(a)(2)] Depending on the size of the aircraft, carriers have different obligations to provide boarding assistance to individuals with a disability using mechanical lifts, ramps, or other suitable devices that do not require lifting or carrying passengers up stairs. [Secs. 382.40 and 382.40a] See also Ch. 5, Section C.

Carriers must train to proficiency in the use of the boarding assistance equipment and procedures regarding the safety and dignity of passengers receiving boarding assistance. [Secs. 382.40(d) and 382.40a(d)]

Storing Wheelchairs and Other Assistive Devices in the Cabin

Carriers must allow passengers with a disability using personal ventilators/respirators to bring their equipment, including non-spillable batteries, on board the aircraft as long as FAA safety regulations

are met. [Sec. 382.41(b)] Carriers must permit passengers to stow their canes and other assistive devices in the cabin and close to their seats, consistent with FAA safety regulations concerning carry-on items. [Sec. 382.41(c)]

Carriers must not count assistive devices toward the limit on carry-on items when a passenger with a disability brings an assistive device on board the aircraft. [Sec. 382.41(d)] Wheelchairs and other assistive devices that cannot be stowed in the cabin must be stowed in the baggage compartment with priority over other cargo and baggage. [Sec. 382.41(f)(3)] In addition, because carriers cannot charge for facilities, equipment, or services required under the law to be provided to qualified individuals with a disability, no charge would be imposed if a wheelchair or assistive device exceeded the limit on checked baggage. [Sec. 382.57] Carriers must permit the in-cabin storage of wheelchairs or components of wheelchairs, including folding, collapsible, or breakdown battery-powered wheelchairs. [Sec. 382.41(e)] In addition, aircraft with 100 or more passenger seats (ordered after April 5, 1990, or delivered after April 5, 1992) must have a priority space in the cabin designated for stowage of at least one passenger's folding wheelchair. [Sec. 382.21(a)(2)]

On-Board Wheelchairs

When required, on-board wheelchairs must be equipped with specific features and be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which they are to be used, and to easily be pushed, pulled, and turned in the cabin environment by carrier personnel. [Sec. 382.21(a)(4)(iii)]

Wheelchairs Unable To Be Stowed in the Cabin as Carry-On

When a folding, collapsible, or break-down wheelchair cannot be stowed in the cabin as carry-on baggage, carriers must ensure the timely checking and return of the passenger's wheelchair or other assistive device as close as possible to the door of the aircraft. [Sec. 382.41(f)]

In order to ensure the timely return of a passenger's wheelchair or other assistive device, carriers must maintain a baggage storage system so that the wheelchair or other assistive device must be among the first items retrieved from the baggage compartment [Sec. 382.41(f)(2)] and it must be stowed in the baggage compartment with priority over other items and baggage. [Sec. 382.41(f)(3)]

Battery-Powered Wheelchairs

Carriers must accept a passenger's battery-powered wheelchair, including the battery, as checked baggage unless baggage compartment size and aircraft airworthiness considerations prohibit it. [Sec. 382.41(g)]

Carriers may require that a passenger with a disability wishing to have a battery-powered wheelchair transported on a flight (including in the cabin) check in for the flight one hour before the scheduled departure time. [Sec. 382.41(g)(1)]

If (i) the battery on the passenger's wheelchair has been labeled by the manufacturer as *non-spillable* or (ii) the battery-powered wheelchair with a *spillable*

battery can be loaded, stored, secured, and unloaded in an upright position, carriers must *not* require the battery to be removed and separately packaged. Carrier personnel may remove and package separately any battery that appears to be damaged or leaking. [Sec. 382.41(g)(2)]

When it is necessary to detach a battery from a wheelchair, carriers must provide packaging for the battery and package the battery consistent with appropriate hazardous materials regulations. [Sec. 382.41(g)(3)]

Liability for Loss or Damage

On domestic flights, the baggage liability limits do not apply for liability for loss, damage, or delay concerning wheelchairs or other assistive devices. Instead, the criterion for calculating the compensation for lost, damaged, or destroyed wheelchairs or other assistive devices must be the original price of the device. [Sec. 382.43(b)] Carrier personnel must not require a passenger with a disability to sign a waiver of liability for damage to or loss of a wheelchair or other assistive device. [Sec. 382.43(c)] Carrier personnel may make notes about preexisting damage or conditions of wheelchairs or other assistive devices.

Individual Safety Briefings and Timely and Complete Access to Information

Carriers must ensure that, upon request, passengers with a disability, including those who are blind or visually impaired or deaf, hard of hearing, or deaf-blind, have timely access to information being provided to other passengers, including but not limited to, safety briefings [Secs. 382.45 and 382.47] and information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, the checking and claiming of luggage, and aircraft changes that will affect the travel of passengers with a disability. [Sec. 382.45(c)] *See also* Ch. 5, Section F. If the safety briefing is presented to passengers on video screens, carriers must ensure that the video presentation is accessible to passengers who are deaf or hard of hearing. [Sec. 382.47(b)]

Complaint Procedures

Carriers providing scheduled service must establish and implement a complaint resolution mechanism including designation of one or more complaints resolution officials (CRO's). [Sec. 382.65(a)] The carrier must make the CRO available during all times the carrier is operating at the airport. [Sec. 382.65(a)(1)] *See also* Ch. 6.

Certificated U.S. carriers and foreign carriers¹ operating to, from, and in the United States using at least one aircraft with more than 60 passenger seats, must record, categorize, and report written disability-related complaints received by carriers to DOT on an annual basis. [Secs. 382.70(b) and (c)] The first annual report for calendar year 2004 was required to be submitted to DOT by January 25, 2005. [Sec. 382.70(d)] In addition, carriers must use the form specified in Appendix A to part 382 when making the

annual report to DOT. Carriers must develop a system for recording and collecting data regarding specific categories of written disability-related complaints that they receive according to the type of disability and the nature of the complaint. [Sec. 382.70(c)]

Employee Training

Management of carriers should be aware that proper training of carrier personnel is critical to compliance with the ACAA and part 382.

Carriers operating aircraft with more than 19 passenger seats must provide training for all personnel who deal with the traveling public, as appropriate to the duties and responsibilities of each employee. [Sec. 382.61(a)]

Carriers must provide training to proficiency in the requirements of the ACAA and its implementing regulations and other DOT and FAA regulations affecting the provision of air transportation to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability. [Sec. 382.61(a)(1)(i) and (ii)]

Carriers must also train employees who deal with the traveling public regarding awareness and appropriate responses to individuals with a disability, including individuals with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability. [Sec. 382.61(a)(2)]

Carriers must consult with organizations representing persons with disabilities in developing their training programs and policies concerning which carrier personnel receive training. [Sec. 382.61(a)(3)]

Carriers must provide or require their contractors to provide training to contractors' employees who deal with the traveling public regarding providing air transportation to passengers with a disability.

Carrier Programs

Carriers operating aircraft with more than 19 passenger seats must establish and implement a written program for carrying out the requirements of the law. [Sec. 382.63(a)] The program must include: (i) A training schedule for training carrier personnel on compliance; and (ii) the carrier's policies and procedures for accommodating individuals with a disability consistent with the requirements under the law. [Sec. 382.63(b)] DOT has the authority to request and review such programs as appropriate. [Secs. 382.63(c) and (d)]

Security Screenings

Carriers must undertake any security screening of a passenger with a disability in the same manner as any other passenger. *See* Ch. 4, Section B. In the wake of the events of September 11, 2001, however, in most cases, TSA has taken over for carriers in the area of providing security screenings of passengers. Should carriers resume this responsibility or in cases where carriers still retain some involvement in the security screening process, this section would be applicable to carriers and contractors of carriers performing this function.

Appendix III

Frequently Asked Questions

Question: What's the difference between the Air Carrier Access Act (ACAA) and the Americans with Disabilities Act (ADA)?

Answer: The ACAA, signed into law by then-President Reagan in 1986, prohibits discrimination by *airlines* against individuals with disabilities in commercial air transportation. The ADA, signed into law after the ACAA in 1990 by then-President Bush, prohibits discrimination against individuals with disabilities in employment, public accommodations, commercial facilities, telecommunications, and *transportation other than by commercial airlines (e.g., subway and bus systems)*. [Sec. 382.1]

Question: Do the ACAA and its implementing regulations (14 CFR part 382 or part 382) apply to both U.S. and foreign carriers?

Answer: When initially passed in 1986, the ACAA and part 382 (subsequently issued in March 1990) applied only to U.S. carriers. However, on April 5, 2000, Congress extended the applicability of the ACAA to cover foreign carriers. At approximately the same time, DOT issued a notice to foreign carriers advising them that the Department intended to use the provisions of part 382, which by its terms does not impose requirements on foreign air carriers, as guidance in investigating any complaints it receives alleging noncompliance with the ACAA by foreign carriers. The only provision of part 382 that currently applies to foreign air carriers is Section 382.70(b), which expressly requires foreign carriers to record, categorize, and report written disability-related complaints associated with any flight segment originating or terminating in the U.S. to DOT on an annual basis. DOT will soon be issuing a revised part 382 that will apply to both U.S. and foreign carriers. [Sec. 382.3]

Question: Recently, I broke my leg and I'll be in a cast and walking with crutches for several weeks. Am I covered by the ACAA?

Answer: Yes. The ACAA and part 382 apply to individuals who have a physical or mental impairment that, on a permanent or temporary basis, substantially limits a major life activity. Since your temporary impairment limits the major life activity of walking, you are considered a qualified individual with a disability. Therefore, you are covered by the ACAA and Part 382. [Sec. 382.5]

Question: Am I entitled to the services and accommodations required by part 382 if I'm a qualified individual with a disability but I'm not a passenger, but rather I am just going to the airport to meet a friend who is traveling?

Answer: Yes. Carriers are required, under appropriate circumstances, to provide the services and accommodations mandated by part 382, on request, to all qualified individuals with disabilities, whether or not such individuals are passengers or simply using the airport facility for other reasons (e.g., meeting a friend, purchasing a ticket for a future flight, etc.)

Question: I understand that part 382 requires airlines to provide wheelchair

¹ Foreign carriers are covered by this section only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States. [Sec. 382.70(b)]

enplaning assistance, on request. I need wheelchair assistance getting from the curb, at the entrance to the airport, to the airplane. Are carriers required to provide wheelchair service from the curb to the airplane or only from the ticket counter to the airplane?

Answer: Part 382 requires carriers to provide wheelchair enplaning help, on request, from the curb to the airplane on departure, and from the airplane back out to the curb upon arrival. However, carriers are not required to station employees at the curb to await the arrival of passengers with disabilities. Therefore, it is advisable to ask a friend or a cab driver to help in getting the attention of carrier personnel in the terminal to obtain the required assistance if the carrier does not have curb-side attendants. If requested, after your flight arrives at your destination, the carrier must also assist you in claiming your checked luggage before assisting you in a wheelchair to the curb. [Sec. 382.39]

Question: Are airlines allowed to charge for providing services to passengers with disabilities?

Answer: Airlines are not allowed to charge passengers for providing services or accommodations required by part 382, but may charge for *optional* services or accommodations. Examples of required services for which carriers may *not* charge are assistance with enplaning, deplaning, and making flight connections, and the carriage of assistive devices (including the provision of hazardous materials packaging for wheelchair batteries, when appropriate). Examples of optional services for which carriers may charge are the provision of in-flight medical oxygen and stretcher service. [Sec. 382.57]

Question: I was flying a U.S. carrier from New York to California and they damaged my expensive battery-powered wheelchair. I purchased this wheelchair last year for \$10,000. The repair cost was \$3,000. Can the carrier limit the amount of money they pay me for this claim to \$2,800, as they currently may for domestic baggage claims?

Answer: No. On claims involving damage to assistive devices on domestic flights, carriers may not invoke the liability limit applicable to baggage claims. The criterion for calculating the compensation for lost or damaged wheelchairs and other assistive devices is the original purchase price of the device. In this instance, the carrier should pay you or the repair company \$3,000 provided that you can document the initial purchase price of the wheelchair and the cost of the repair. You may also be entitled to reimbursement for the cost of a loaner or rental wheelchair while yours is being repaired. [Sec. 382.43]

Question: I'm flying from Cleveland to Chicago on ABC Airlines and then connecting on XYZ Airlines on a flight from Chicago to Seattle. I need wheelchair assistance to reach my connecting gate. Which carrier is responsible for providing this wheelchair assistance to the connecting gate?

Answer: As the delivering carrier, ABC Airlines is required to provide you with the requested wheelchair assistance in reaching your connecting gate, at which point XYZ

Airlines is then responsible for providing you with assistance in enplaning onto your connecting flight. The delivering carrier must assist you in reaching your connecting gate even if you are traveling on two separate tickets and the connecting flight is departing from a different terminal within the same airport. However, you should make the need for such assistance clear to ABC Airlines before the flight, if possible. [Sec. 382.39]

Question: On aircraft that must have a priority stowage space in the cabin for my personal folding wheelchair, do I still get priority stowage for my folding wheelchair if the pilot happens to have his personal belongings in that space when I pre-board?

Answer: Yes. Your personal folding wheelchair takes priority over the personal carry-on items of the pilot and crew. [Sec. 382.41(e)(2)]

Question: I fly with my service animal and normally ask for a bulkhead seat, as it provides a little bit more room for my service dog. On a recent flight, the carrier would not allow me to sit in the bulkhead row with my service animal because the bulkhead row was also an emergency exit row. Was the carrier correct in asking me to take a seat other than a bulkhead seat in the emergency exit row?

Answer: Yes. The carrier was within its rights to refuse to permit you to sit in the bulkhead seat with your service animal, because the service animal may have blocked access to the emergency exit. Carriers must comply with all applicable FAA safety rules, even when attempting to accommodate the needs of passengers with disabilities. In such instances, the carrier should permit you and your service animal to move to another seat within the cabin that is not located in an emergency exit row that best accommodates your needs. [Sec. 382.37]

Question: Is obesity considered a disability under the ACAA and, if so, is an obese passenger entitled to two seats for the price of one if he or she needs more than one seat?

Answer: Obesity in and of itself is not necessarily a qualifying disability. However, obesity could be a qualifying disability if, for example, it substantially limits a major life activity, such as walking. If an obese passenger—whether the passenger is a qualified individual with a disability or not—occupies more than one seat, airlines may charge that passenger for the number of seats the passenger occupies. Also, there may be certain obese persons who are too heavy to be safely accommodated on certain aircraft, e.g., because of safety limitations on seatbelts. [Secs. 382.5 and 382.38(i)]

Question: I require medical oxygen when I travel by air. Are airlines required to provide in-flight medical oxygen and, if so, may they charge passengers for providing medical oxygen?

Answer: Although many of the major U.S. carriers currently provide in-flight medical oxygen for a fee, part 382 does not require them to do so. Those carriers that choose to provide in-flight medical oxygen may charge passengers for this service, just as they may for other optional services, such as stretcher service. [Sec. 382.33]

Question: I'm a paraplegic and travel with my personal manual wheelchair. May airlines require me to travel with an attendant?

Answer: Airlines may not require a passenger with a mobility impairment to travel with an attendant if that passenger can physically *assist* in his or her evacuation. Since, in most instances, paraplegics have use of their arms and upper bodies, they can usually physically assist in their evacuation and generally should not be required to travel with an attendant. To the contrary, quadriplegics with no use of their arms or legs can be required to fly with an attendant. [Sec. 382.35]

Question: I'm deaf and want to make sure that I receive important information such as schedule changes, gate changes, etc. Do the airlines have to provide me with such information?

Answer: Yes. Part 382 requires carriers to provide passengers who are deaf or hard of hearing or who have vision impairments with timely access to the same information that they provide to other passengers in the airport terminal or on the aircraft. Persons who are unable to obtain this information from the audio or visual systems used by carriers may have to advise the carrier about the nature of their disability, at which point the carrier must ensure that such individuals receive the necessary information in an accessible manner. [Sec. 382.45]

Question: Can things other than wheelchairs or canes be assistive devices? What exactly does part 382 mean when it refers to assistive devices?

Answer: Assistive devices under Part 382 are not limited to mobility devices such as wheelchairs, walkers, and canes. An assistive device can be any piece of equipment that assists passengers with a disability in carrying out a major life activity. Such devices are those devices or equipment used to assist a passenger with a disability in caring for himself or herself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, or performing other functions of daily life. Assistive devices may include medical devices and medications.

Question: How can I find out information on the number and types of disability-related complaints filed with DOT against specific airlines?

Answer: DOT's Aviation Consumer Protection Division publishes a monthly Air Travel Consumer Report (ATCR) which provides information on the number of disability-related complaints received each month by DOT. The ATCR can be accessed at <http://airconsumer.ost.dot.gov>. In addition, an amendment to DOT's disability rule (part 382) that came into effect on August 7, 2003, requires U.S. and foreign airlines operating passenger-carrying flights to and from the United States with aircraft having a designed seating capacity of more than 60 seats to report annually to DOT on the number and type of written disability-related complaints that they receive. These individual carrier reports will contain summary information on the number of such complaints, the type of disability, and the nature of the complaint. The first such report, which covers written complaints received by the airlines during calendar year 2004, was due by January 25, 2005. DOT intends to provide a summary report to Congress, which will be available to the public. [Section 382.70]

Question: I travel with a service animal and ask for a bulkhead seat if one is available, as I find such a seat to be more comfortable for my service dog. How come some passengers with service animals avoid the bulkhead row?

Answer: It is DOT's understanding that some service animals are trained to curl up underneath a non-bulkhead row airline seat, whereas other service animals are more comfortable in the area between a bulkhead seat and the bulkhead wall itself. For this reason, when DOT amended part 382 to require seating accommodations for passengers traveling with service animals, it required carriers to provide either a seat in a bulkhead row or a seat other than a bulkhead seat, depending on the individual passenger's preference.

Question: Are airlines allowed to require all passengers who are both deaf and blind to travel with an attendant?

Answer: No. Airlines may not have a policy that requires all passengers who are both deaf and blind to travel with an attendant. However, if an individual passenger has both a hearing and vision impairment so severe that the individual cannot establish some means of communicating with airline personnel sufficiently to receive the preflight

safety briefing (e.g., using the "printing on palm" method of "writing" with your fingertip on the palm of the passenger's hand, or using a "raised alphabet" card to communicate), an airline could require that individual to travel with an attendant. DOT recognizes that in many situations carrier personnel may have difficulty communicating with a passenger who is deaf and blind. Such determinations must be made on a case-by-case basis using an individualized assessment of the passenger's specific capabilities.

Appendix IV

Recent Department of Transportation Enforcement Orders Related to the Air Carrier Access Act

The following list of orders pertains to administrative enforcement actions conducted by or filed with the Aviation Enforcement and Proceedings (AEP) Office of the Department of Transportation (DOT). These administrative determinations by and large pertain to decisions resulting from enforcement actions against air carriers pursuant to the Air Carrier Access Act (ACAA), 49 U.S.C. 41705, and its implementing regulations, 14 CFR part 382, which prohibit discrimination by U.S. air

carriers against qualified individuals with disabilities. These orders may be informative in assisting the reader to understand how the ACAA and its implementing regulation have been interpreted by DOT and applied in enforcement actions against air carriers.

The AEP Office's statutory jurisdiction spans a broad range of regulatory legal issues including civil rights and consumer protection, among others. The AEP issues many and varied types of orders within the scope of its authority. The orders listed in this appendix address only the most recent civil rights enforcement actions under the ACAA, going back to March, 2000 and are not meant to be a complete listing of all ACAA orders issued by the DOT through its AEP Office.

To access these orders, go to <http://www.dot.gov>. Click on "Dockets and Regulations," then "Docket Management System," and then on "Simple Search." Type in the last five digits of the docket number pertaining to the order that you are interested in. Using the date the order was issued and/or the order number, scroll through the docket index to identify the order you wish to review and click on the appropriate format in which you wish to retrieve the document.

Issues	Date of issue	Order No.	Docket No.
Failure to provide prompt and proper enplaning, connecting, and deplaning assistance primarily to passengers who have mobility impairments.	8/18/04	2004-8-19	OST-2004-16943
"Medically-prescribed marijuana"	5/27/04	2004-5-25	OST-2003-14808
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	4/30/04	2004-4-22	OST-2004-16943
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	3/9/04	2004-3-4	OST-2004-16493
Failure to provide prompt and proper enplaning, connecting, and deplaning assistance primarily to passengers who have mobility impairments.	12/5/03	2003-12-6	OST-2003-14194
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	11/13/03	2003-11-5	OST-2003-14194
Failure to provide prompt and proper enplaning, connecting, and deplaning assistance primarily to passengers who have mobility impairments.	11/10/03	2003-11-4	OST-2003-16507
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	10/8/03	2003-10-11	OST-2003-14194
Failure to provide adequate transport, enplaning, and deplaning assistance, wheelchair stowage and damage.	9/8/03	2003-9-4	OST-2003-14194
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	8/28/03	2003-8-30	OST-2003-14194
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	8/28/03	2003-8-29	OST-2003-14194
Failure to provide a priority space to stow at least one passenger's folding wheelchair in the cabin.	8/28/03	2003-8-28	OST-2003-14194
Prompt and proper enplaning and deplaning assistance	7/11/03	2003-7-12	OST-2003-14194
Prompt and proper enplaning and deplaning assistance	6/2/03	2003-6-3	OST-2001-10598
Prompt and proper enplaning and deplaning assistance	3/26/03	2003-3-19	OST-2003-14194
Prompt and proper enplaning and deplaning assistance	3/4/03	2003-3-1	OST-2003-14194
Special seating accommodations for tall people	3/19/02	2002-7-36	OST-2001-8991
Adequate wheelchair assistance and other required assistance	2/11/02	2002-3-15	OST-2002-10598
Refusal to transport a person with a disability	8/2/01	2001-8-17	OST-2001-19598
Sensitivity to tobacco smoke	3/12/01	2001-3-9	OST-2000-7891
In-cabin wheelchair stowage	2/7/2001	2001-2-6	OST-2000-7591
Refusal to transport a person with a disability	8/22/00	2000-8-18	OST-2000-10597
Prompt and proper enplaning and deplaning assistance; wheelchair stowage	3/27/00	2000-3-24	OST-99-6111

Appendix V

14 CFR Part 382

TITLE 14 -- AERONAUTICS AND SPACE
CHAPTER II -- OFFICE OF THE SECRETARY
DEPARTMENT OF TRANSPORTATION**PART 382****NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL****Subpart A—General Provisions**

- 382.1 Purpose.
- 383.3 Applicability.
- 382.5 Definitions.
- 382.7 General prohibition of discrimination.
- 382.9 Assurances from contractors.

Subpart B—Requirements Concerning Facilities

- 382.21 Aircraft accessibility.
- 382.23 Airport facilities.

Subpart C—Requirements for Services

- 382.31 Refusal of transportation.
- 382.33 Advance notice requirements.
- 382.35 Attendants.
- 382.37 Seat assignments.
- 382.38 Seating accommodations.
- 382.39 Provision of services and equipment.
- 382.40 Boarding assistance for small aircraft.
- 382.40a Boarding assistance for large aircraft
- 382.41 Stowage of personal equipment.
- 382.43 Treatment of mobility aids and assistive devices.
- 382.45 Passenger information.
- 382.47 Accommodations for persons with hearing impairments.
- 382.49 Security screening of passengers.
- 382.51 Communicable diseases.
- 382.53 Medical certificates.
- 382.55 Miscellaneous provisions.
- 382.57 Charges for accommodations prohibited.

Subpart D—Administrative Provisions

- 382.61 Training.
- 382.63 Carrier programs. AUTHORITY: 49 U.S.C. 41702, 47105, and 41712.
- 382.65 Compliance procedures. SOURCE: 55 FR 8046, Mar. 6, 1990 and amendments.
- 382.70 Disability-related complaints received by carriers.

SUBPART A -- GENERAL PROVISIONS**§ 382.1 Purpose.**

The purpose of this part is to implement the Air Carrier Access Act of 1986 (49 U.S.C. 41705), which provides that no air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation.

§ 382.3 Applicability.

(a) Except as provided in this section, this part applies to all air carriers providing air transportation.

(b) Sections 382.21-382.63 do not apply to indirect air carriers.

(c) Except for § 382.70, this part does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions, and commonwealths.

(d) Nothing in this part shall authorize or require a carrier to fail to comply with any applicable FAA safety regulation.

(e) The compliance date for the following provisions of this part is June 4, 1990:

- § 382.7 (b)
- § 382.21(c)
- § 382.31(e)
- § 382.33(f)
- § 382.35 (d), (e)
- § 382.37 (b), (c)
- § 382.39 (a) (second sentence of introductory language); (a)(1) and (a)(2), with respect to acquisition of equipment; (a)(3); (b)(3); (b)(4)
- § 382.41 (d), (e)(2), (f)
- § 382.45 (a), (c)
- § 382.47(a)
- § 382.49 (b), (c)
- § 382.65 (a), (b)(2).

(f) The compliance date for the following provisions of this part is August 5, 1990:

- § 382.9
- § 382.23(e)
- § 382.33(d)
- § 382.51
- § 382.53(c).

(g) The compliance date for the following provisions for this part is October 5, 1990:

- § 382.35 (b)(2), (b)(3)
- § 382.41(g), with respect to the acceptance and stowage of batteries requiring hazardous

materials packaging, for carriers which, as of March 6, 1990, had a policy of carrying no hazardous materials.

§ 382.5 Definitions.

As used in this Part --

Air Carrier or carrier means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

Air carrier airport means a public, commercial service airport which enplanes annually 2,500 or more passengers and receives scheduled air service.

Air transportation means interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act.

Department or DOT means the United States Department of Transportation.

FAA means the Federal Aviation Administration, an operating administration of the Department.

Facility means all or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport, to the extent the carrier exercises control over the selection, design, construction, or alteration of the property.

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

- (a) *Physical or mental impairment* means:
 - (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or
 - (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy,

epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

- (1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;
- (2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or
- (3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

Indirect air carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of an air carrier.

Qualified individual with a disability means a individual with a disability who --

(a) With respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies, takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

(b) With respect to obtaining a ticket for air transportation on an air carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(c) With respect to obtaining air transportation, or other services or accommodations required by this part:

(1) Purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and

(2) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers;

Scheduled air service means any flight scheduled in the current edition of the Official

Airline Guide, the carrier's published schedule, or the computer reservation system used by the carrier.

§ 382.7 General prohibition of discrimination.

(a) A carrier shall not, directly or through contractual, licensing, or other arrangements:

(1) Discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) Require a person with a disability to accept special services (including, but not limited to, preboarding) not requested by the passenger;

(3) Exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, even if there are separate or different services available for persons with a disability except when specifically permitted by another section of this part; or,

(4) Take any action adverse to an individual because of the individual's assertion, on his or her own behalf or through or behalf of others, of rights protected by this part or the Air Carrier Access Act.

(b) If an indirect air carrier provides facilities or services for passengers that are covered for other carriers by sections 382.21-382.55, the indirect air carrier shall do so in a manner consistent with those sections.

(c) Carriers shall, in addition to meeting the other requirements of this part, modify policies, practices, or facilities as needed to ensure nondiscrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program.

§ 382.9 Assurances from contractors.

Carriers' contracts with contractors who provide services to passengers, including carriers' agreements of appointment with travel agents (excluding travel agents who are not U.S. citizens who provide services to air carriers outside the United States, its territories and commonwealths), shall include a clause assuring:

(a) Nondiscrimination on the basis of disability, consistent with this part, by such

contractors in activities performed on behalf of the carriers; and

(b) That contractor employers will comply with directives issued by carrier complaints resolution officials (CROs) under § 382.65.

§§ 382.11--382.19 [Reserved]

SUBPART B -- REQUIREMENTS CONCERNING FACILITIES

§ 382.21 Aircraft accessibility.

(a) The following requirements apply to new aircraft operated under 14 CFR part 121 and ordered by the carrier after April 5, 1990 or delivered to the carrier after April 5, 1992:

(1)(i) Aircraft with 30 or more passenger seats on which passenger aisle seats have armrests shall have movable aisle armrests on at least one-half of passenger aisle seats.

(ii) Such armrests are not required to be provided on aisle seats on which a movable armrest is not feasible or aisle seats which a passenger with a mobility impairment is precluded from using by an FAA safety rule.

(iii) For aircraft equipped with movable aisle armrests as required by this paragraph, carriers shall configure cabins, or establish administrative systems, to ensure that individuals with mobility impairments or other persons with disabilities can readily obtain seating in rows with movable aisle armrests.

(2) Aircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair;

(3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory. This lavatory shall permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments;

(4)(i) Aircraft with more than 60 passenger seats having an accessible lavatory, whether

or not required to have such a lavatory by paragraph (a)(3) of this section, shall be equipped with an operable on-board wheelchair for the use of passengers.

(ii) The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 60 passenger seats on the request (with advance notice as provided in § 382.33(b)(8)) of a qualified individual with a disability who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat without the use of an on-board wheelchair.²

(iii) On-board wheelchairs shall include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the occupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence. The chair shall be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(b)(1) Except as provided in paragraph (b)(2) of this section, aircraft in service on the effective date of this part (April 5, 1990) shall not be required to be retrofitted for the sole purpose of enhancing accessibility.

(2) No later than April 5, 1992, each carrier shall comply with the provisions of paragraph (a)(4) of this section with respect to all aircraft with more than 60 passenger seats operated under 14 CFR part 121.

(c) Whenever an aircraft operated under 14 CFR part 121 which does not have the accessibility features set forth in paragraph (a) of this section undergoes replacement of cabin interior elements or lavatories, or the replacement of existing seats with newly manufactured seats, the carrier shall meet the requirements of paragraph (a) of this section with respect to the affected feature(s) of the aircraft.

(d) Aircraft operated under 14 CFR part 121 with fewer than 30 passenger seats with respect to the requirements of paragraph (a)(1)

² The Aerospaziale/Aeritalia ATR-72 and the British Aerospace Advanced Turboprop (ATP), in configurations having between 60 and 70 passenger seats, are exempt from this requirement. See 57 FR 12872, April 14, 1992.

of this section), fewer than 100 passenger seats (with respect to the requirements of paragraph (a)(2) of this section) or 60 or fewer passenger seats (with respect to the requirements of paragraph (a)(4) of this section), and aircraft operated under 14 CFR part 135, shall comply with the requirements of this section to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations.

(e) Any replacement or refurbishing of the aircraft cabin shall not reduce existing accessibility to a level below that specified in this part.

(f) Carriers shall maintain aircraft accessibility features in proper working order.

§ 382.23 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport, including parking and ground transportation facilities.

(b) Air carriers shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Air carriers shall be deemed to comply with this Air Carrier Access Act obligation if they meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(c) The carrier shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rule.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part for carriers and applicable section 504

and ADA rules of the Department of Transportation and Department of Justice for airport operators.

[Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§§ 382.25--382.29 [Reserved]

SUBPART C -- REQUIREMENTS CONCERNING SERVICES

§ 382.31 Refusal of transportation.

(a) Unless specifically permitted by a provision of this part, a carrier shall not refuse to provide transportation to a qualified individual with a disability on the basis of his or her disability.

(b) A carrier shall not refuse to provide transportation to a qualified individual with a disability solely because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) A carrier shall not refuse to provide transportation to qualified individuals with a disability by limiting the number of such persons who are permitted to travel on a given flight.

(d) Carrier personnel, as authorized by 49 U.S.C. 44902, 14 CFR 91.8, or 14 CFR 121.533, may refuse to provide transportation to any passenger on the basis of safety, and may refuse to provide transportation to any passenger whose carriage would violate the Federal Aviation Regulations. In exercising this authority, carrier personnel shall not discriminate against any qualified individual with a disability on the basis of disability and their actions shall not be inconsistent with the provisions of this Part. In the event that such action is inconsistent with the provisions of this Part, the carrier shall be subject to remedies provided under § 382.65.

(e) When a carrier refuses to provide transportation to any person on a basis relating to the individual's disability, the carrier shall specify in writing to the person the basis for the refusal, including, where applicable, the reasonable and specific basis for the carrier's opinion that transporting the person would or might be inimical to the safety of the flight. This written explanation shall be provided within 10 calendar days of the refusal of transportation.

§ 382.33 Advance notice requirements.

(a) Except as provided in paragraph (b) of this section, a carrier shall not require a qualified individual with a disability to provide advance notice of his or her intention to travel or of his or her disability as a condition of receiving transportation or of receiving services or accommodations required by this part.

(b) A carrier may require up to 48 hours advance notice and one-hour advance check-in concerning a qualified individual with a disability who wishes to receive any of the following services, types of equipment, or accommodations:

(1) Medical oxygen for use on board the aircraft, if this service is available on the flight;

(2) Carriage of an incubator, if this service is available on the flight;

(3) Hook-up for a respirator to the aircraft electrical power supply, if this service is available on the flight;

(4) Accommodation for a passenger who must travel in a stretcher, if this service is available on the flight;

(5) Transportation for an electric wheelchair on a flight scheduled to be made with an aircraft with fewer than 60 seats;

(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device;

(7) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(8) Provision of an on-board wheelchair on an aircraft that does not have an accessible lavatory.

(c) If a passenger does not meet advance notice or check-in requirements established by a carrier consistent with this section, the carrier shall nonetheless provide the service, equipment, or accommodation if it can do so by making a reasonable effort, without delaying the flight.

(d) Carriers' reservation and other administrative systems shall ensure that when advance notice is provided by qualified individuals with a disability as provided by this section, the notice is recorded and properly transmitted to operating employees responsible for providing the accommodation concerning which notice was provided.

(e) If the qualified individual with a disability provides the notice required by the carrier for a service under paragraph (b) of this section, the carrier shall ensure that the requested service is provided.

(f) If a qualified individual with a disability provides advance notice to a carrier, and the individual is forced to change to the flight of a different carrier because of the cancellation of the original flight or the substitution of inaccessible equipment, the first carrier shall, to the maximum extent feasible, provide assistance to the second carrier in providing the accommodation requested by the individual from the first carrier.

§ 382.35 Attendants.

(a) Except as provided in this section, a carrier shall not require that a qualified individual with a disability travel with an attendant as a condition of being provided air transportation. A concern on the part of carrier personnel that a individual with a disability may need to use inaccessible lavatory facilities or may otherwise need extensive special assistance for personal needs which carrier personnel are not obligated to provide is not a basis on which the carrier may require an attendant.

(b) A carrier may require that a qualified individual with a disability meeting any of the following criteria travel with an attendant as a condition of being provided air transportation, if the carrier determines that an attendant is essential for safety:

(1) A person traveling in a stretcher or incubator. The attendant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A person who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571 (a) (3) and (a)(4) or 14 CFR 135.117(b);

(3) A person with a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft;

(4) A person who has both severe hearing and severe vision impairments, if the person(a) On request of an individual who self-identifies to a carrier as having a disability specified in this paragraph, the carrier shall provide the following seating accommodations, subject to the provisions of this section:

(c) If the carrier determines that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with an attendant, contrary to the individual's self-assessment that he or she is capable of traveling independently, the carrier shall not charge for the transportation of the attendant.

(d) If, because there is not a seat available on a flight for an attendant whom the carrier has determined to be necessary, a person with a disability who has a confirmed reservation is unable to travel on the flight, the person with a disability shall be eligible for denied boarding compensation under 14 CFR part 250.

(e) For purposes of determining whether a seat is available for an attendant, the attendant shall be deemed to have checked in at the same time as the person with a disability.

§ 382.37 Seat assignments.

(a) Carriers shall not exclude any qualified individual with a disability from any seat in an exit row or other location or require that a qualified individual with a disability sit in any particular seat, on the basis of disability, except in order to comply with the requirements of an FAA safety regulation or as provided in this section.

(b) If a person's disability results in involuntary active behavior that would result in the person properly being refused transportation under § 382.31, and the safety problem could be mitigated to a degree that would permit the person to be transported consistent with safety if the person is seated in a particular location, the carrier shall offer the person that particular seat location as an alternative to being refused transportation.

(c) If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying (see § 382.55(a)(2)), the carrier shall offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel with checked baggage.

§ 382.38 Seating accommodations.

(1) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, the carrier shall provide a seat in a row with a movable aisle armrest.

(2) The carrier shall provide a seat next to a passenger traveling with a disability for a person assisting the individual in the following circumstances:

(i) When an individual with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (e.g., assistance with eating);

(ii) When an individual with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight; or

(iii) When an individual with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight.

(3) For an individual traveling with a service animal, the carrier shall provide, as the individual requests, either a bulkhead seat or a seat other than a bulkhead seat.

(4) For a person with a fused or immobilized leg, the carrier shall provide a bulkhead seat or other seat that provides greater legroom than other seats, on the side of an aisle that better accommodates the individual's disability.

(b) A carrier that provides advance seat assignments shall comply with the requirements of paragraph (a) of this section by any of the following methods:

(1) The carrier may "block" an adequate number of the seats used to provide the seating accommodations required by this section.

(i) The carrier shall not assign these seats to passengers not needing seating accommodations provided under this paragraph until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, the carrier shall assign a seat meeting the requirements of this section to an individual who requests it.

(iii) If an individual with a disability does not make a request at least 24 hours before the scheduled departure of the flight, the carrier

shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(2) The carrier may designate an adequate number of the seats used to provide seating accommodations required by this section as "priority seats" for individuals with disabilities.

(i) The carrier shall provide notice that all passengers assigned these seats (other than passengers with disabilities listed in paragraph (a) of this section) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section. The carrier may provide this notice through its computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(ii) The carrier shall assign a seat meeting the requirements of this section to an individual who requests the accommodation and checks in at least one hour before the scheduled departure of the flight. If all designated priority seats that would accommodate the individual have been assigned to other passengers, the carrier shall reassign the seats of the other passengers as needed to provide the requested accommodation.

(iii) If the individual with a disability does not check in at least an hour before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(c) On request of an individual who self-identifies to a carrier as having a disability other than one in the four categories listed in paragraph (a) of this section and as needing a seat assignment accommodation in order to readily access and use the carrier's air transportation services, a carrier that assigns seats in advance shall provide such an accommodation, as described in this paragraph.

(1) A carrier that complies with paragraph (a) of this section through the "seat-blocking" mechanism of paragraph (b)(1) of this section shall implement the requirements of this paragraph as follows:

(i) When the passenger with a disability not described in paragraph (a) of this section

makes a reservation more than 24 hours before the scheduled departure time of the flight, the carrier is not required to offer the passenger one of the seats blocked for the use of passengers with disabilities listed under paragraph (a) of this section.

(ii) However, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) A carrier that complies with this section through the "designated priority seats" mechanism of paragraph (b)(2) of this section shall implement the requirements of this paragraph as follows:

(i) When a passenger with a disability not described in paragraph (a) of this section makes a reservation, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in paragraph (b)(2) of this section.

(d) A carrier that does not provide advance seat assignments shall provide seating accommodations for persons described in paragraphs (a) and (c) of this section by allowing them to board the aircraft before other passengers, including other "pre-boarded" passengers, so that the individuals needing seating accommodations can select seats that best meet their needs if they have taken advantage of the opportunity to pre-board.

(e) A carrier may comply with the requirements of this section through an alternative method not specified in paragraphs (b) through (d) of this section. A carrier wishing to do so shall obtain the written concurrence of the Department of Transportation (Office of the Secretary) before implementing the alternative method.

(f) The carrier shall assign a seat providing an accommodation requested by an individual with a disability, as specified in this section, even if the seat is not otherwise available for assignment to the general passenger population at the time of the individual's request.

(g) If the carrier has already provided a seat to an individual with a disability to furnish an accommodation required by paragraph (a) or (c) of this section, the carrier shall not reassign that individual to another seat in response to a subsequent request from another individual with a disability, without the first individual's consent.

(h) In no case shall any individual be denied transportation on a flight in order to provide accommodations required by this section.

(i) Carriers are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased.

(j) In responding to requests from individuals for accommodations required by this section, carriers shall comply with FAA safety rules, including those pertaining to exit seating (see 14 CFR 121.585 and 135.129).

(k) Carriers are required to comply with this section beginning September 30, 1998.

§ 382.39 Provision of services and equipment.

Carriers shall ensure that qualified individuals with a disability are provided the following services and equipment:

(a) Carriers shall provide assistance requested by or on behalf of qualified individuals with a disability, or offered by air carrier personnel and accepted by qualified individuals with a disability, in enplaning and deplaning. The delivering carrier shall be responsible for assistance in making flight connections and transportation between gates.

(1) This assistance shall include, as needed, the services personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

(2) Boarding shall be by level-entry loading bridges or accessible passenger lounges, where these means are available. Where these means are unavailable, assistance in boarding aircraft with 30 or fewer passenger seats shall be provided as set forth in Sec. 382.40, and assistance in boarding aircraft with 31 or more seats shall be provided as set forth in Sec. 382.40a. In no case shall carrier personnel hand-carry a passenger in order to provide boarding or deplaning assistance (i.e., directly pick up the passenger's body in the arms of one or more carrier personnel to effect a

change of level that the passenger needs to enter or leave the aircraft). Hand-carrying of passengers is permitted only for emergency evacuations.

(3) Carriers shall not leave a passenger with a disability unattended in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes.

(b) Carriers shall provide services within the aircraft cabin as requested by or on behalf of individuals with a disability, or when offered by air carrier personnel and accepted by individuals with a disability as follows:

(1) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(2) Assistance in preparation for eating, such as opening packages and identifying food;

(3) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(4) Assistance to a semiambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(5) Assistance in loading and retrieving carry-on items, including mobility aids and other assistive devices stowed on board in accordance with § 382.41.

(c) Carriers are not required to provide extensive special assistance to qualified individuals with a disability. For purposes of this section, extensive special assistance includes the following activities:

(1) Assistance in actual eating;

(2) Assistance within the restroom or assistance at the passenger's seat with elimination functions;

(3) Provision of medical services.

§ 382.40 Boarding assistance for small aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having 19-30 seat capacity at airports with 10,000 or more annual enplanements.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c) (1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight using a 19-30 seat aircraft check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of

Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(5) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2) of this part.

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

(2) Carriers who do not operate aircraft with more than a 19-seat capacity shall ensure that those personnel involved in providing boarding assistance are trained to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

[Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.40a Boarding assistance for large aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having a seating capacity of 31 or more passengers at airports with 10,000 or more annual enplanements, in any situation where passengers are not boarded by level-entry loading bridges or accessible passenger lounges.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c) (1) Each carrier that does not provide passenger boarding by level-entry loading

bridges or accessible passenger lounges shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than March 4, 2002, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 4, 2002. All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Level-entry boarding assistance under the agreement is not required with respect to float planes or with respect to any widebody aircraft determined by the Department of Transportation to be unsuitable for boarding assistance by lift, ramp, or other device on the basis that no existing boarding assistance device on the market will accommodate the aircraft without a significant risk of serious damage to the aircraft or injury to passengers or employees.

(5) When level-entry boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in Sec. 382.39 (a)(2).

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d) The training of carrier personnel required by Sec. 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment

used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

§ 382.41 Stowage of personal equipment.

(a) All stowage of qualified individuals with a disability wheelchairs and other equipment covered by this Part in aircraft cabins shall be in accordance with 14 CFR 121.589 and 14 CFR 121.285(c) or 14 CFR 135.87, as applicable.

(b) Carriers shall permit qualified individuals with a disability using personal ventilators/respirators to bring their equipment, including non-spillable batteries that meet the requirements of 49 CFR 173.159(d) and any applicable FAA safety regulations, on board the aircraft and use it.

(c) Carriers shall permit qualified individuals with a disability to stow canes and other assistive devices on board the aircraft in close proximity to their seats, consistent with the requirements of FAA safety regulations for carry-on items.

(d) Carriers shall not, in implementing their carry-on baggage policies, count toward a limit on carry-on items any assistive device brought into the cabin by a qualified individual with a disability.

(e) Carriers shall provide for on-board stowage of passengers' wheelchairs (including collapsible or break-down battery-powered wheelchairs, subject to the provisions of paragraph (g)(5) of this section) as carry-on baggage as follows:

(1) Carriers shall permit the stowage of wheelchairs or components of wheelchairs in overhead compartments and under seats, consistent with the requirements of FAA safety regulations for carry-on items.

(2) In an aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a folding, collapsible, or break-down wheelchair, the carrier shall designate priority stowage space, as described below, for at least one folding, collapsible, or break-down wheelchair in that area. A individual with a disability who takes advantage of a carrier offer of the opportunity to pre-board the aircraft may stow his or her wheelchair in this area, with priority over the carry-on items brought onto the aircraft by other passengers enplaning at the same airport. A individual with a disability who does not take advantage of a carrier offer of the opportunity to preboard may use the area

to stow his or her wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(3) If an approved stowage area in the cabin is not available for a folding, collapsible, or break-down wheelchair, the wheelchair shall be stowed in the cargo compartment.

(f) When a folding, collapsible, or break-down wheelchair cannot be stowed in the passenger cabin as carry-on baggage, carriers shall provide for the checking and timely return of passengers' wheelchairs and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except where this practice would be inconsistent with DOT regulations governing the transportation of hazardous materials.

(1) At the request of the passenger, the carrier may return wheelchairs or other assistive devices to the passenger at the baggage claim area instead of at the door of the aircraft.

(2) In order to achieve the timely return of wheelchairs, passengers' wheelchairs and other assistive devices shall be among the first items retrieved from the baggage compartment.

(3) Wheelchairs and other assistive devices shall be stowed in the baggage compartment with priority over other cargo and baggage. Where this priority results in passengers' baggage being unable to be carried on the flight, the carrier shall make its best efforts to ensure that the other baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

(g) Whenever baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept a passenger's battery-powered wheelchair, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(19) and (20) and the provisions of paragraph (f) of this section.

(1) Carriers may require that qualified individuals with a disability wishing to have battery-powered wheelchairs transported on a flight (including in the cabin) check in one hour before the scheduled departure time of the flight. If such an individual checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) If the battery on the individual's wheelchair has been labeled by the manufacturer as non-spillable as provided in

49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery is loaded, stored, secured and unloaded in an upright position, the carrier shall not require the battery to be removed and separately packaged. Notwithstanding this requirement, carriers may remove and package separately any battery that appears to be damaged or leaking.³

(3) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(19) and (20) and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) Carriers shall not drain batteries.

(5) At the request of a passenger, a carrier shall stow a folding, break-down or collapsible battery-powered wheelchair in the passenger cabin stowage area as provided in paragraph (e) of this section. If the wheelchair can be stowed in the cabin without removing the battery, the carrier shall not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, the carrier shall remove the battery and stow it in the baggage compartment as provided in paragraph (g)(3) of this section. In this case, the carrier shall permit the wheelchair, with battery removed, to be stowed in the cabin.

(h) Individuals with disabilities shall be permitted to provide written directions concerning the disassembly and reassembly of their wheelchairs.

§ 382.43 Treatment of mobility aids and assistive devices.

(a) When wheelchairs or other assistive devices are disassembled by the carrier for stowage, the carrier shall reassemble them and ensure their prompt return to the individual with a disability. Wheelchairs and other assistive devices shall be returned to the passenger in the condition received by the carrier.

(b) With respect to domestic transportation, the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage, or delay concerning wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.

(c) Carriers shall not require qualified individuals with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.

§ 382.45 Passenger information.

(a) A carrier shall make available, on request, the following information concerning facilities and services related to the provision of air transportation to qualified individuals with a disability. This information shall pertain to the type of aircraft and, where feasible, the specific aircraft scheduled for a specific flight:

(1) The location of seats, if any, with movable armrests and any seats which the carrier, consistent with this part, does not make available to qualified individuals with a disability;

(2) Any limitations on the ability of the aircraft to accommodate qualified individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The carrier shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

(3) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other equipment commonly used by persons with a disability;

(4) Whether the aircraft has an accessible lavatory.

(b) The following provisions govern the provision of individual safety briefings to qualified individuals with a disability:

(1) Individual safety briefings shall be conducted for any passenger where required by 14 CFR 121.571 (a)(3) and (a)(4) or 14 CFR 135.117(b);

(2) Carrier personnel may offer an individual briefing to any other passenger;

(3) Individual safety briefings for qualified individuals with a disability shall be conducted as inconspicuously and discreetly as possible;

(4) Carrier personnel shall not require any qualified individual with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers

with respect to the general safety briefing, and shall not take any action adverse to a qualified individual with a disability on the basis that the person has not "accepted" the briefing.

(c) Each carrier shall ensure that qualified individuals with a disability, including those with vision or hearing impairments, have timely access to information the carrier provides to other passengers in the terminal or on the aircraft (to the extent that it does not interfere with crewmembers' safety duties as set forth in FAA regulations) including, but not limited to, information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, and the checking and claiming of luggage; Provided, That persons who are unable to obtain such information from the audio or visual systems used by carriers in airports or on aircraft shall request the information from carrier personnel. Carriers shall also provide information on aircraft changes that will affect the travel of persons with a disability.

(d) Carriers shall have, at each airport they use, a copy of this part and shall make it available for review by persons with a disability on request.

[Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.47 Accommodations for persons with hearing impairments.

(a) Each carrier providing scheduled air service, or charter service under section 401 of the Federal Aviation Act, and which makes available telephone reservation and information service available to the public shall make available a telecommunications device for the deaf (TDD) service to enable persons with hearing impairments to make reservations and obtain information. The TDD service shall be available during the same hours as the telephone service for the general public and the response time for answering calls shall be equivalent. Users of the TDD service shall not be subject to charges for a call that exceed those applicable to other users of the telephone information and reservation service.

(b) In aircraft in which safety briefings are presented to passengers on video screens, the carrier shall ensure that the video presentation is accessible to persons with hearing impairments.

(1) Except as provided in paragraph (b)(2) of this section, the carrier shall implement this requirement by using open captioning or an

³ EDITORIAL NOTE: As stated in the preamble discussion of this provision (63 FR 10534), carriers may deny transportation for the battery if the potential safety hazard is serious enough.

inset for a sign language interpreter as part of the video presentation.

(2) A carrier may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset could be placed in the video presentation without so interfering with it as to render it ineffective or would be large enough to be readable.

- 3) Carriers shall implement the requirements of this section by substituting captioned video materials for uncaptioned video materials as the uncaptioned materials are replaced in the normal course of the carrier's operations.

§ 382.49 Security screening of passengers.

(a) Qualified individuals with a disability shall undergo security screening in the same manner, and be subject to the same security requirements, as other passengers. Possession by a qualified individual with a disability of an aid used for independent travel shall not subject the person or the aid to special screening procedures if the person using the aid clears the security system without activating it. Provided, That this paragraph shall not prohibit security personnel from examining a mobility aid or assistive device which, in their judgment, may conceal a weapon or other prohibited item. Security searches of qualified individuals with a disability whose aids activate the security system shall be conducted in the same manner as for other passengers. Private security screenings shall not be required for qualified individuals with a disability to a greater extent, or for any different reason, than for other passengers.

(b) Except as provided in paragraph (c) of this section, if a qualified individual with a disability requests a private screening in a timely manner, the carrier shall provide it in time for the passenger to enplane.

(c) If a carrier employs technology that can conduct an appropriate screening of a passenger with a disability without necessitating a physical search of the person, the carrier is not required to provide a private screening.

§ 382.51 Communicable diseases.

(a) Except as provided in paragraph (b) of this section, a carrier shall not take any of the following actions, with respect to a person who is otherwise a qualified individual with a disability, on the basis that the individual has a communicable disease or infection:

(1) Refuse to provide transportation to the person;

(2) Require the person to provide a medical certificate; or

(3) Impose on the person any condition, restriction, or requirement not imposed on other passengers.

(b)(1) The carrier may take the actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection only if the individual's condition poses a direct threat to the health or safety of others.

(2) For purposes of this section, a direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(3) In determining whether an individual poses a direct threat to the health or safety of others, a carrier must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; that the potential harm to the health and safety of others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(4) In taking actions authorized under this paragraph, carriers shall select the alternative, consistent with the safety and health of other persons, that least restrictive from the point of view of the passenger with the communicable disease. For example, the carrier should not refuse to provide transportation to an individual if provision of a medical certificate or reasonable modifications to practices, policies, or procedures will mitigate the risk of communication of the disease to others to extent that would permit the individual to travel.

(5) If an action authorized under this paragraph results in the postponement of a passenger's travel, the carrier shall permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger's originally scheduled trip without penalty or at the passenger's discretion, provide a refund for any unused flights, including return flights.

(6) Upon the passenger's request, the carrier shall provide to the passenger a written

explanation of any action taken under this paragraph within 10 days of the request.

(c) If a qualified individual with a disability with a communicable disease or infection of the kind described in paragraph (b) of this section presents a medical certificate to the carrier, as provided in § 382.53(c)(2), the carrier shall provide transportation to the individual, unless it is not feasible for the carrier to implement the conditions set forth in the medical certificate as necessary to prevent the transmission of the disease or infection to other persons in the normal course of a flight.

[Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.53 Medical certificates.

(a) Except as provided in this section, a carrier shall not require a person who is otherwise a qualified person with a disability to have a medical certificate as a condition for being provided transportation.

(b)(1) A carrier may require a medical certificate for a qualified individual with a disability --

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight, as provided in 14 CFR 121.574; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing a flight safely, without requiring extraordinary medical assistance during the flight.

(c)(1) If a qualified individual with a disability has a communicable disease or infection of the kind described in § 382.51(b), a carrier may require a medical certificate.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions in the particular passenger's case, be communicable to other persons during the normal course of a flight. The medical certificate shall state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the

normal course of a flight. It shall be dated within ten days of the date of the flight for which it is presented.

§ 382.55 Miscellaneous provisions.

(a) Carriers shall permit dogs and other service animals used by persons with a disability to accompany the persons on a flight.

(1) Carriers shall accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags, or the credible verbal assurances of the qualified individual with a disability using the animal.

(2) Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation.

(3) In the event that special information concerning the transportation of animals outside the continental United States is either required to be or is provided by the carrier, the information shall be provided to all passengers traveling with animals outside the continental United States with the carrier, including those traveling with service animals.

(b) Carriers shall not require qualified individuals with a disability to sit on blankets.

(c) Carriers shall not restrict the movements of persons with a disability in terminals or require them to remain in a holding area or other location in order to be provided transportation, to receive assistance, or for other purposes, or otherwise mandate separate treatment for persons with a disability, except as permitted or required in this part.

§ 382.57 Charges for accommodations prohibited.

Carriers shall not impose charges for providing facilities, equipment, or services that are required by this part to be provided to qualified individuals with a disability.

§§ 382.59 [Reserved]

SUBPART D -- ADMINISTRATIVE PROVISIONS

§ 382.61 Training.

(a) Each carrier which operates aircraft with more than 19 passenger seats shall provide

training, meeting the requirements of this paragraph, for all its personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) The carrier shall ensure training to proficiency concerning:

(i) The requirements of this part and other DOT or FAA regulations affecting the provision of air travel to persons with a disability; and

(ii) The carrier's procedures, consistent with this part, concerning the provision of air travel to persons with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability.

(2) The carrier shall also train such employees with respect to awareness and appropriate responses to persons with a disability, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(3) The carrier shall consult with organizations representing persons with disabilities in developing its training program and the policies and procedures concerning which carrier personnel are trained.

(4) The carrier shall ensure that personnel required to receive training shall complete the training by the following times:

(i) For crewmembers subject to training required under 14 CFR part 121 or 135, who are employed on the date the carrier's program is established under § 382.63, as part of their next scheduled recurrent training;

(ii) For other personnel employed on the date the carrier's program is established under § 382.63, within 180 days of that date;

(iii) For crewmembers subject to training requirements under 14 CFR part 121 or 135 whose employment in any given position commences after the date the carrier's program is established under § 382.63, before they assume their duties; and

(iv) For other personnel whose employment in any given position commences after the date the carrier's program is established under § 382.63, within 60 days of the date on which they assume their duties.

(5) Each carrier shall ensure that all personnel required to receive training receive

refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency.

(6) Each carrier shall provide, or require its contractors to provide, training to the contractors' employees concerning travel by persons with a disability. This training is required only for those contractor employees who deal directly with the traveling public at airports, and it shall be tailored to the employees' functions. Training for contractor employees shall meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(7) Current employees of each carrier designated as complaints resolution officials, for purposes of § 382.65 of this part, shall receive training concerning the requirements of this part and the duties of a complaints resolution official within 60 days of the effective date of this part (i.e., by June 4, 1990). Employees subsequently designated as complaints resolution officers shall receive this training before assuming their duties under § 382.65. All employees performing the complaints resolution official function shall receive annual refresher training concerning their duties and the provisions of this regulation.

(b) Each carrier operating only aircraft with 19 or fewer passenger seats shall provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraphs (a)(1) and (a)(2) of this section and comply with the requirements of this part.

§ 382.63 Carrier programs.

(a)(1) Each carrier that operates aircraft with more than 19 passenger seats shall establish and implement, within 180 days of the effective date of this part (i.e., by October 2, 1990), a written program for carrying out the requirements of this part.

(2) Carriers are not excused from compliance with the provisions of this part during the 180 days before carrier programs are required to be established.

(b) The program shall include the following elements:

(1) The carrier's schedule for training its personnel in compliance with § 382.61;

(2) The carrier's policies and procedures for accommodating passengers with a disability consistent with the requirements of this part.

(c)(1) Major and National carriers (as defined in the DOT publication Air Carrier Traffic Statistics), and every U.S. carrier that shares the designator code of a Major or National carrier (as described in 14 CFR 399.88), shall submit their program to the Department for review within 180 days of the effective date of this part (i.e., by October 2, 1990).

(2) The Department shall review each carrier's program, which the carrier shall implement without further DOT action at the time it is submitted to the Department.

(3) If the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

(d) Other carriers shall maintain their programs on file, and shall make them available for review by the Department on the Department's request. If, upon such review, the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

§ 382.65 Compliance procedures.

(a) Each carrier providing scheduled service shall establish and implement a complaint resolution mechanism, including designating one or more complaints resolution official(s) (CRO) to be available at each airport which the carrier serves.

(1) The carrier shall make a CRO available to any person who complains of alleged violations of this part during all times the carrier is operating at the airport.

(2) The carrier may make the CRO available via telephone, at no cost to the passenger, if the CRO is not present in person at the airport at the time of the complaint. If a telephone link to the CRO is used, TDD service shall be available so that persons with hearing impairments may readily communicate with the CRO.

(3) Each CRO shall be thoroughly familiar with the requirements of this part and the carrier's procedures with respect to passengers with a disability.

(4) Each CRO shall have the authority to make dispositive resolution of complaints on behalf of the carrier.

(5) When a complaint is made to a CRO, the CRO shall promptly take dispositive action as follows:

(i) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this part, the CRO shall take or direct other carrier personnel to take action, as necessary, to ensure compliance with this part. Provided, That the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

(ii) If an alleged violation of a provision of this part has already occurred, and the CRO agrees that a violation has occurred, the CRO shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(iii) If the CRO determines that the carrier's action does not violate a provision of this part, the CRO shall provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.

(iv) The statements required to be provided in paragraph (a)(5) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section. This statement shall be provided in person to the complainant at the airport if possible; otherwise, it shall be forwarded to the complainant within 10 calendar days of the complaint.

(b) Each carrier shall establish a procedure for resolving written complaints alleging violation of the provisions of this part.

(1) A carrier is not required to respond to a complaint postmarked more than 45 days after the date of the alleged violation.

(2) A written complaint shall state whether the complainant has contacted a CRO in the matter, the name of the CRO and the date of the contact, if available, and include any written response received from the CRO.

(3) The carrier shall make a dispositive written response to a written complaint alleging a violation of a provision of this part within 30 days of its receipt.

(i) If the carrier agrees that a violation has occurred, the carrier shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(ii) If the carrier denies that a violation has occurred, the response shall include a summary of the facts and the carrier's reasons, under this part, for the determination.

(iii) The statements required to be provided in paragraph (b)(3) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section.

(c) Any person believing that a carrier has violated any provision of this part may contact the following office for assistance: Department of Transportation, Aviation Consumer Protection Division, 400 7th Street, SW., Washington, DC 20590, (202) 366-2220.

(d) Any person believing that a carrier has violated any provision of this part may file a formal complaint under the applicable procedures of 14 CFR part 302.

§ 382.70 Disability-related complaints received by carriers.

(a) For the purposes of this section, a disability-related complaint means a specific written expression of dissatisfaction received from, or submitted on behalf, of an individual with a disability concerning a difficulty associated with the person's disability, which the person experienced when using or attempting to use an air carrier's or foreign air carrier's services.

(b) This section applies to certificated U.S. carriers and foreign air carriers operating to, from, and in the United States, conducting passenger operations with at least one aircraft having a designed seating capacity of more than 60 passengers. Foreign air carriers are covered by this section only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States.

(c) Carriers shall categorize disability-related complaints that they receive according to the type of disability and nature of complaint. Data concerning a passenger's disability must be recorded separately in the following areas: vision impaired, hearing impaired, vision and hearing impaired, mentally impaired, communicable disease, allergies (e.g., food allergies, chemical sensitivity), paraplegic, quadriplegic, other

wheelchair, oxygen, stretcher, other assistive device (cane, respirator, etc.), and other disability. Data concerning the alleged discrimination or service problem related to the disability must be separately recorded in the following areas: refusal to board, refusal to board without an attendant, security issues concerning disability, aircraft not accessible, airport not accessible, advance notice dispute, seating accommodation, failure to provide adequate or timely assistance, damage to assistive device, storage and delay of assistive device, service animal problem, unsatisfactory information, and other.

(d) Carriers shall submit an annual report summarizing the disability-related complaints that they received during the prior calendar year using the form specified in Appendix A to this Part. The first report shall cover complaints received during calendar year 2004 and shall be submitted to the Department of Transportation by January 25, 2005. Carriers shall submit all subsequent reports on the last Monday in January of that year for the prior calendar year. All submissions must be made through the World Wide Web except for situations where the carrier can demonstrate that it would suffer undue hardship if it were not permitted to submit the data via paper copies, disks, or email, and DOT has approved an exception. All fields in the form must be completed; carriers are to enter "0" where there were no complaints in a given category. Each annual report must contain the following certification signed by an authorized representative of the carrier: "I, the undersigned, do certify that this report has been prepared under my direction in accordance with the regulations in 14 CFR Part 382. I affirm that, to the best of my knowledge and belief, this is a true, correct, and complete report." Electronic signatures will be accepted.

(e) Carriers shall retain correspondence and record of action taken on all disability-related complaints for three years after receipt of the complaint or creation of the record of action taken. Carriers must make these records available to Department of Transportation officials at their request.

(f)(1) In a code-share situation, each carrier shall comply with paragraphs (c) through (e) of this section for—

(i) Disability-related complaints it receives from or on behalf of passengers with respect to difficulties encountered in connection with service it provides;

(ii) Disability-related complaints it receives from or on behalf of passengers when it is

unable to reach agreement with its code-share partner as to whether the complaint involves service it provides or service its code-share partner provides; and

(iii) Disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(2) Each carrier shall also forward to its code-share partner disability-related complaints the carrier receives from or on behalf of passengers with respect to difficulties encountered in connection with service provided by its code-sharing partner.

(g) Each carrier, except for carriers in code-share situations, shall comply with paragraphs (c) through (e) of this section for disability-related complaints it receives from or on behalf of passengers as well as disability-related complaints forwarded by another carrier or governmental agency with respect to difficulties encountered in connection with service it provides.

(h) Carriers that do not submit their data via the Web shall use the disability-related complaint data form specified in appendix A to this part when filing their annual report summarizing the disability-related complaints they received. The report shall be mailed, by the dates specified in paragraph (d) of this section, to the following address: U.S. Department of Transportation, Aviation Consumer Protection Division, 400 7th Street, SW., Room 4107, C-75, Washington, DC 20590.

[Source: 68 FR 40488, July 8, 2003]

Total number of complaints (i.e., incidents): _____

[illegible]

passenger responds that the animal is a service animal and not a pet, but uncertainty remains about the animal, appropriate follow-up questions would include:

- “What tasks or functions does your animal perform for you?” or
- “What has it been trained to do for you?”
- “Would you describe how the animal performs this task (or function) for you?”

• As noted earlier, functions include, but are not limited to:

- A. Helping blind or visually impaired people to safely negotiate their surroundings;
- B. Alerting deaf and hard-of-hearing persons to sounds;
- C. Helping people with mobility impairments to open and close doors, retrieve objects, transfer from one seat to another, maintain balance; or
- D. Alert or respond to a disability-related need or emergency (e.g., seizure, extreme social anxiety or panic attack).

• Note that to be a service animal that can properly travel in the cabin, the animal need not necessarily perform a function for the passenger during the flight. For example, some dogs are trained to help pull a passenger's wheelchair or carry items that the passenger cannot readily carry while using his or her wheelchair. It would not be appropriate to deny transportation in the cabin to such a dog.

• If a passenger cannot provide credible assurances that an animal has been individually trained or is able to perform some task or function to assist the passenger with his or her disability, the animal might not be a service animal. In this case, the airline personnel may require documentation (see Documentation below).

• There may be cases in which a passenger with a disability has personally trained an animal to perform a specific function (e.g., seizure alert). Such an animal may not have been trained through a formal training program (e.g., a “school” for service animals). If the passenger can provide a reasonable explanation of how the animal was trained or how it performs the function for which it is being used, this can constitute a “credible verbal assurance” that the animal has been trained to perform a function for the passenger.

2. *Look for physical indicators on the animal:* Some service animals wear harnesses, vests, capes or backpacks. Markings on these items or on the animal's tags may identify it as a service animal. It should be noted, however, that the absence of such equipment does not necessarily mean the animal is not a service animal.

3. *Request documentation for service animals other than emotional support animals:* The law allows airline personnel to ask for documentation as a means of verifying that the animal is a service animal, but DOT urges carriers not to require documentation as a condition for permitting an individual to travel with his or her service animal in the cabin unless a passenger's verbal assurance is not credible. In that case, the airline may require documentation as a condition for allowing the animal to travel in the cabin. The purpose of documentation is to substantiate the passenger's disability-

related need for the animal's accompaniment, which the airline may require as a condition to permit the animal to travel in the cabin. Examples of documentation include a letter from a licensed professional treating the passenger's condition (e.g., physician, mental health professional, vocational case manager, etc.)

4. *Require documentation for emotional support animals:* With respect to an animal used for emotional support (which need not have specific training for that function), airline personnel may require current documentation (i.e., not more than one year old) on letterhead from a mental health professional stating (1) that the passenger has a mental health-related disability; (2) that having the animal accompany the passenger is necessary to the passenger's mental health or treatment or to assist the passenger (with his or her disability); and (3) that the individual providing the assessment of the passenger is a licensed mental health professional and the passenger is under his or her professional care. Airline personnel may require this documentation as a condition of permitting the animal to accompany the passenger in the cabin. The purpose of this provision is to prevent abuse by passengers that do not have a medical need for an emotional support animal and to ensure that passengers who have a legitimate need for emotional support animals are permitted to travel with their service animals on the aircraft. Airlines are not permitted to require the documentation to specify the type of mental health disability, e.g., panic attacks.

5. *Observe behavior of animals:* Service animals are trained to behave properly in public settings. For example, a properly trained guide dog will remain at its owner's feet. It does not run freely around an aircraft or an airport gate area, bark or growl repeatedly at other persons on the aircraft, bite or jump on people, or urinate or defecate in the cabin or gate area. An animal that engages in such disruptive behavior shows that it has not been successfully trained to function as a service animal in public settings. Therefore, airlines are not required to treat it as a service animal, even if the animal performs an assistive function for a passenger with a disability or is necessary for a passenger's emotional well-being.

What about service animals in training? Part 382 requires airlines to allow service animals to accompany their handlers⁶ in the cabin of the aircraft, but airlines are not required otherwise to carry animals of any kind either in the cabin or in the cargo hold. Airlines are free to adopt any policy they choose regarding the carriage of pets and other animals provided that they comply with other applicable requirements (e.g., the Animal Welfare Act). Although “service animals in training” are not pets, the ACAA does not include them, because “in training” status indicates that they do not yet meet the legal definition of service animal. However, like pet policies, airline policies regarding service animals in training vary. Some

airlines permit qualified trainers to bring service animals in training aboard an aircraft for training purposes. Trainers of service animals should consult with airlines, and become familiar with their policies.

What about a service animal that is not accompanying a qualified individual with a disability? When a service animal is not accompanying a passenger with a disability, the airline's general policies on the carriage of animals usually apply. Airline personnel should know their company's policies on pets, service animals in training, and the carriage of animals generally. Individuals planning to travel with a service animal other than their own should inquire about the applicable policies in advance.

Qualified Individuals With Disabilities⁷

How do I know if a passenger is a qualified individual with a disability who is entitled to bring a service animal in the cabin of the aircraft if the disability is not readily apparent?

• Ask the passenger about his or her disability as it relates to the need for a service animal. Once the passenger identifies the animal as a service animal, you may ask, “How does your animal assist you with your disability?” Avoid the question “What is your disability?” as this implies you are asking for a medical label or the cause of the disability, which is intrusive and inconsistent with the intent of the ACAA. Remember, Part 382 is intended to facilitate travel by people with disabilities by requiring airlines to accommodate them on an individual basis.

• Ask the passenger whether he or she has documentation as a means of verifying the medical necessity of the passenger traveling with the animal. Keep in mind that you can ask but cannot require documentation as proof of service animal status UNLESS (1) a passenger's verbal assurance is not credible and the airline personnel cannot in good faith determine whether the animal is a service animal without documentation, or (2) a passenger indicates that the animal is to be used as an emotional support animal.

• Using the questions and other factors above, you must decide whether it is reasonable to believe that the passenger is a qualified individual with a disability, and the animal is a service animal.

Denying a Service Animal Carriage in the Cabin

What do I do if I believe that carriage of the animal in the cabin of the aircraft would inconvenience non-disabled passengers? Part 382 requires airlines to permit qualified individuals with a disability to be accompanied by their service animals in the cabin, as long as the animals do not (1) pose a direct threat to the health or safety of others (e.g., animal displays threatening behaviors by growling, snarling, lunging at, or attempting to bite other persons on the aircraft) or (2) cause a significant disruption in cabin service (i.e., a “fundamental alteration” to passenger service). Inconvenience of other passengers is not sufficient grounds to deny a service animal

⁶ Service animal users typically refer to the person who accompanies the animal as the “handler.”

⁷ See Glossary.

carriage in the cabin; as indicated later in this document, however, airlines are not required to ask other passengers to relinquish space that they would normally use in order to accommodate a service animal (e.g., space under the seat in front of the non-disabled passenger).

What do I do if I believe that a passenger's assertions about having a disability or a service animal are not credible?

- Ask if the passenger has documentation that satisfies the requirements for determining that the animal is a service animal (see discussion of "Documentation" above).

- If the passenger has no documents, then explain to the passenger that the animal cannot be carried in the cabin, because it does not meet the criteria for service animals. Explain your airline's policy on pets (i.e., will or will not accept for carriage in the cabin or cargo hold), and what procedures to follow.

- If the passenger does not accept your explanation, avoid getting into an argument. Ask the passenger to wait while you contact your airline's *complaint resolution official* (CRO). Part 382 requires all airlines to have a CRO available at each airport they serve during all hours of operation. The CRO may be made available by telephone. The CRO is a resource for resolving difficulties related to disability accommodation.

- Consult with the CRO immediately, if possible. The CRO normally has the authority to make the final decision regarding carriage of service animals. In the rare instance that a service animal would raise a concern regarding flight safety, the CRO may consult with the pilot-in-command. If the pilot-in-command makes a decision to restrict the animal from the cabin or the flight for safety reasons, the CRO cannot countermand the pilot's decision. This does not preclude the Department from taking subsequent enforcement action, however, if it is determined that the pilot's decision was inconsistent with Part 382.

- If a passenger makes a complaint to a CRO about a past decision not to accept an animal as a service animal, then the CRO must provide a written statement to the passenger within 10 days explaining the reason(s) for that determination. If carrier personnel other than the CRO make the final decision, a written explanation is not required; however, because denying carriage of a legitimate service animal is a potential civil rights violation, it is recommended that carrier personnel explain to the passenger the reason the animal will not be accepted as a service animal. A recommended practice may include sending passengers whose animals are not accepted as service animals a letter within ten business days explaining the basis for such a decision.

In considering whether a service animal should be excluded from the cabin, keep these things in mind:

- Certain unusual service animals pose unavoidable safety and/or public health concerns and airlines are not required to transport them. Snakes, other reptiles, ferrets, rodents, and spiders certainly fall within this category of animals.

- In all other circumstances, each situation must be considered individually. Do not

make assumptions about how a particular unusual animal is likely to behave based on past experience with other animals. You may inquire, however, about whether a particular animal has been trained to behave properly in a public setting.

- Before deciding to exclude the animal, you should consider and try available means of mitigating the problem (e.g., muzzling a dog that barks frequently, allowing the passenger a reasonable amount of time under the circumstances to correct the disruptive behavior, offering the passenger a different seat where the animal won't block the aisle.)

If it is determined that the animal should not accompany the disabled passenger in the cabin at this time, offer the passenger alternative accommodations in accordance with Part 382 and company policy (e.g., accept the animal for carriage in the cargo hold).

What about unusual service animals?

- As indicated above, certain unusual service animals, pose unavoidable safety and/or public health concerns and airlines are not required to transport them. Snakes, other reptiles, ferrets, rodents, and spiders certainly fall within this category of animals. The release of such an animal in the aircraft cabin could result in a direct threat to the health or safety of passengers and crewmembers. For these reasons, airlines are not required to transport these types of service animals in the cabin, and carriage in the cargo hold will be in accordance with company policies on the carriage of animals generally.

- Other unusual animals such as miniature horses, pigs and monkeys should be evaluated on a case-by-case basis. Factors to consider are the animal's size, weight, state and foreign country restrictions, and whether or not the animal would pose a direct threat to the health or safety of others, or cause a fundamental alteration (significant disruption) in the cabin service. If none of these factors apply, the animal may accompany the passenger in the cabin. In most other situations, the animal should be carried in the cargo hold in accordance with company policy.

Miscellaneous Questions

What about the passenger who has two or more service animals?

- A single passenger legitimately may have two or more service animals. In these circumstances, you should make every reasonable effort to accommodate them in the cabin in accordance with Part 382 and company policies on seating. This might include permitting the passenger to purchase a second seat so that the animals can be accommodated in accordance with FAA safety regulations. You may offer the passenger a seat on a later flight if the passenger and animals cannot be accommodated together at a single passenger seat. Airlines may not charge passengers for accommodations that are required by Part 382, including transporting service animals in the cargo compartment. If carriage in the cargo compartment is unavoidable, notify the destination station to return the service animal(s) to the passenger at the gate as soon as possible, or to assist the passenger as

necessary to retrieve them in the appropriate location.

What if the service animal is too large to fit under the seat in front of the customer?

- If the service animal does not fit in the assigned location, you should relocate the passenger and the service animal to some other place in the cabin in the same class of service where the animal will fit under the seat in front of the passenger and not create an obstruction, such as the bulkhead. If no single seat in the cabin will accommodate the animal and passenger without causing an obstruction, you may offer the option of purchasing a second seat, traveling on a later flight or having the service animal travel in the cargo hold. As indicated above, airlines may not charge passengers with disabilities for services required by Part 382, including transporting their oversized service animals in the cargo compartment.

Should passengers provide advance notice to the airline concerning multiple or large service animals? In most cases, airlines may not insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (e.g., temperature conditions that limit live animal transport).

What if an airline employee or another passenger on board is allergic or has an adverse reaction to a passenger's service animal? Passengers who state they have allergies or other animal aversions should be located as far away from the service animal as practicable. Whether or not an individual's allergies or animal aversions are disabilities (an issue this Guidance does not address), each individual's needs should be addressed to the fullest extent possible under the circumstances and in accordance with the requirements of Part 382 and company policy.

Accommodating Passengers With Service Animals in the Cabin

How can airline personnel help ensure that passengers with service animals are assigned and obtain appropriate seats on the aircraft?

- Let passengers know the airline's policy about seat assignments for people with disabilities. For instance: (1) Should the passenger request pre-boarding at the gate? or (2) should the passenger request an advance seat assignment (a priority seat such as a bulkhead seat or aisle seat) up to 24 hours before departure? or (3) should the passenger request an advance seat assignment at the gate on the day of departure? When assigning priority seats, ask the passenger what location best fits his/her needs.

- Passengers generally know what kinds of seats best suit their service animals. In certain circumstances, passengers with service animals must either be provided their pre-requested priority seats, or if their requested seat location cannot be made

available, they must be assigned to other available priority seats of their choice in the same cabin class. Part 382.38 requires airlines to provide a bulkhead seat or a seat other than a bulkhead seat at the request of an individual traveling with a service animal.

- Passengers should comply with airline recommendations or requirements regarding when they should arrive at the gate before a flight. This may vary from airport to airport and airline to airline. Not all airlines announce pre-boarding for passengers with special needs, although it may be available. If you wish to request pre-boarding, tell the agent at the gate.

- Unless pre-boarding is not part of your carrier's business operation, a timely request for pre-boarding by a passenger with a disability should be honored (382.38 (d)).

- Part 382 does not require carriers to make modifications that would constitute an undue burden or would fundamentally alter their programs (382.7 (c)). Therefore, the following are *not* required in providing accommodations for users of service animals and are examples of what might realistically be viewed as creating an undue burden:

- Asking another passenger to give up the space in front of his or her seat to accommodate a service animal;

- Denying transportation to any individual on a flight in order to provide an accommodation to a passenger with a service animal;

- Furnishing more than one seat per ticket; and

- Providing a seat in a class of service other than the one the passenger has purchased.

Are airline personnel responsible for the care and feeding of service animals? Airline personnel are not required to provide care, food, or special facilities for service animals. The care and supervision of a service animal is solely the responsibility of the passenger with a disability whom the animal is accompanying.

May an air carrier charge a maintenance or cleaning fee to passengers who travel with service animals? Part 382 prohibits air carriers from imposing special charges for accommodations required by the regulation, such as carriage of a service animal. However, an air carrier may charge passengers with a disability if a service animal causes damage, as long as it is its regular practice to charge non-disabled passengers for similar kinds of damage. For example, it could charge a passenger with a disability for the cost of repairing or cleaning a seat damaged by a service animal, assuming that it is its policy to charge when a non-disabled passenger or his or her pet causes similar damage.

Advice for Passengers With Service Animals

- Ask about the airline's policy on advance seat assignments for people with disabilities. For instance: (1) Should a passenger request pre-boarding at the gate? or (2) should a passenger request an advance seat

assignment (a priority seat such as a (bulkhead seat or aisle seat)) up to 24 hours before departure? or (3) should a passenger request an advance seat assignment at the gate on the day of departure?

- Although airlines are not permitted to automatically require documentation for service animals other than emotional support animals, if you think it would help you explain the need for a service animal, you may want to carry documentation from your physician or other licensed professional confirming your need for the service animal. Passengers with unusual service animals also may want to carry documentation confirming that their animal has been trained to perform a function or task for them.

- If you need a specific seat assignment for yourself and your service animal, make your reservation as far in advance as you can, and identify your need at that time.

- You may have to be flexible if your assigned seat unexpectedly turns out to be in an emergency exit row. When an aircraft is changed at the last minute, seating may be reassigned automatically. Automatic systems generally do not recognize special needs, and may make inappropriate seat assignments. In that case, you may be required by FAA regulations to move to another seat.

- Arrive at the gate when instructed by the airline, typically at least one hour before departure, and ask the gate agent for pre-boarding—if that is your desire.

- Remember that your assigned seat may be reassigned if you fail to check in on time; airlines typically release seat assignments not claimed 30 minutes before scheduled departure. In addition, if you fail to check in on time you may not be able to take advantage of the airline's pre-board offer.

- If you have a very large service animal or multiple animals that might need to be transported in the cargo compartment, contact the airline well in advance of your travel date. In most cases, airlines cannot insist on advance notice or health certificates for service animals under the ACAA regulations. However, it is very useful for passengers to contact the airline well in advance if one or more of their service animals may need to be transported in the cargo compartment. The passenger will need to understand airline policies and should find out what type of documents the carrier would need to ensure the safe passage of the service animal in the cargo compartment and any restrictions for cargo travel that might apply (e.g., temperature conditions that limit live animal transport).

- If you are having difficulty receiving an appropriate accommodation, ask the airline employee to contact the airline's *complaint resolution official (CRO)*. Part 382 requires all airlines to have a CRO available during all hours of operation. The CRO is a resource for resolving difficulties related to disability accommodations.

- Another resource for resolving issues related to disability accommodations is the U.S. Department of Transportation's aviation

consumer disability hotline. The toll-free number is 1-800-778-4838 (voice) and 1-800-455-9880 (TTY).

Glossary

Direct Threat to the Health or Safety of Others

A significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

Fundamental Alteration

A modification that substantially alters the basic nature or purpose of a program, service, product or activity.

Individual With a Disability

"Any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." (Section 382.5).

Qualified Individual With a Disability

Any individual with a disability who:

- (1) "Takes those actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public with respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies";

- (2) "Offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain * * * a ticket" "for air transportation on an air carrier"; or

- (3) "Purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers." (Section 382.5).

Service Animal

Any animal that is individually trained or able to provide assistance to a qualified person with a disability; or any animal shown by documentation to be necessary for the emotional well being of a passenger.

Sources

See: 14 CFR 382.5, 14 CFR 382.37(a) and (c), 14 CFR 382.38 (a)(3), (b), (d) & (h)-(j), 14 CFR 382.55(a)(1)-(3), 14 CFR 382.57, "Guidance Concerning Service Animals in Air Transportation," (61 FR 56420-56422, (November 1, 1996)), "Commonly Asked Questions About Service Animals in Places of Business" (Department of Justice, July, 1996), and "ADA Business Brief: Service Animals" (Department of Justice, April 2002).

[FR Doc. 05-13947 Filed 7-18-05; 8:45 am]

BILLING CODE 4910-62-P



Federal Register

**Tuesday,
July 19, 2005**

Part III

Department of the Interior

Bureau of Land Management

**43 CFR Parts 3000, 3100, 3120, et al.
Oil and Gas Leasing; Geothermal
Resources Leasing; Coal Management;
Management of Solid Minerals Other
Than Coal; Mineral Materials Disposal;
and Mining Claims Under the General
Mining Laws; Proposed Rule**

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

43 CFR Parts 3000, 3100, 3120, 3130, 3150, 3160, 3200, 3470, 3500, 3600, 3800, 3830, 3833, 3835, 3836, 3860, and 3870

[WO-610-4111-02-24 1A]

RIN 1004-AC64

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims Under the General Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplemental notice of proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is again proposing to amend its mineral resources regulations to increase many fees and to impose new fees to cover BLM's costs of processing certain documents relating to its minerals programs. This would include costs for actions such as environmental studies, monitoring activities, and other processing-related costs. The BLM would establish some fixed fees and some fees on a case-by-case basis. The proposed fee changes are based on statutory authorities, which authorize BLM to charge for its processing costs, and on policy guidance from the Office of Management and Budget (OMB) and the Department of the Interior (DOI) requiring BLM to charge these fees. The fee changes also respond to recommendations issued in audit reports by the DOI's Office of Inspector General (OIG).

DATES: You should submit your comments on or before August 18, 2005. The BLM may or may not consider comments postmarked or received by messenger or electronic mail after the above date in the decision-making process on the final rule.

ADDRESSES: Mail Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153. Personal or messenger delivery: 1620 L Street NW., Suite 401, Washington, DC 20036. Email: *Comments_washington@blm.gov*.

FOR FURTHER INFORMATION CONTACT: For issues related to BLM's Minerals Program contact Tim Spisak, Fluid Minerals Group Manager (202) 452-5061 or Ted Murphy, Solid Minerals Division Manager (202) 452-0351. Contact Cynthia Ellis (202) 452-5012 for

issues relating to BLM's regulatory matters. Individuals who use a telecommunications device for the deaf may contact these individuals through the Federal Information Relay Service at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

- I. Public Comment Procedures
- II. Background
- III. Discussion of the Proposed Rule
- IV. Procedural Matters

I. Public Comment Procedures

A. How Do I File Comments?

If you wish to comment, you may submit your comments by any one of several methods.

- *Mail:* Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia, 22153.

- *Personal or messenger delivery:* 1620 L Street NW., Suite 401, Washington, DC 20036.

- *Comments_washington@blm.gov.*

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. Please include a reference to "RIN 1004-AC64" in your comments.

The DOI may or may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). BLM has set the comment period for this proposed rule at 30 days. We believe this provides sufficient time for public comment because most of this rule was proposed in nearly identical form on December 15, 2000 (65 FR 78440-78455). BLM extended the original comment period to over six months, until July 2, 2001 (66 FR 19413, April 16, 2001). We believe that 30 days allows sufficient time to comment on the fees that are new in this proposed rule. Moreover, this rule is necessary to implement the cost recovery fee collection provisions included in the President's 2006 Budget, as passed by Congress. Because the revenue is needed to cover BLM's operating expenses in FY 2006, it was determined that BLM could not provide a longer comment period without jeopardizing the government's ability to implement these fees in a timely manner.

B. May I Review Comments Others Submit?

If you want your comments to remain confidential, do not send us your comments at the e-mail address. In addition, all comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: Personal or messenger delivery" during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your 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.

If you provide comments on company or institutional letterhead, we will assume those comments were given with the approval of the organization and may identify them as such.

BLM received 135 comments in response to the original proposed rule published on December 15, 2000, in the **Federal Register** (65 FR 78440-78455). This republished rule has updated fees and clarifies several issues that were in the 2000 proposed rule. If you provided comments in response to the December 15, 2000, proposed rule you need not submit those comments again. We will address those comments in any final rule.

II. Background

Federal agencies are authorized to charge processing costs by the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701. The BLM also has specific authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. Public lands in FLPMA means all lands or interests in land owned by the United States and administered by BLM, excluding outer continental shelf lands and Native American lands (43 U.S.C. 1702(e)). This applies to Federal mineral lands with private or state surface as well as to lands where the United States owns both the surface and mineral rights. The BLM interprets this definition to mean that a mineral lease or mineral materials disposal administered by BLM, or a mining claim

(for which BLM determines validity), even in land where another agency administers the surface, is an "interest in land" for the purposes of FLPMA. BLM is not proposing in this rule to recover costs for work we perform in administering Indian leases.

Before BLM disposes of mineral materials or issues a mineral lease on these lands, if the surface managing agency also exercises any responsibility relating to disposal of the minerals, the mineral estate may not be sufficiently under the administrative control of BLM to qualify as public lands for purposes such as exchanges. However, once BLM issues a mineral lease or proceeds with a mineral materials disposal, we are administering an interest in the lands, and that interest now falls under the FLPMA definition of public lands. Because the Secretary of the Interior has primary jurisdiction over determining the validity of mining claims, and BLM administers the mineral estate covered by those claims, mining claims also qualify as public lands under FLPMA. Of course, BLM also has authority under the IOAA to collect fees for processing documents related to its administration of the mineral estate in these instances.

The IOAA and section 304 of FLPMA authorize BLM to charge applicants for the cost of processing documents through the rulemaking process, which BLM is proposing to do through this rule. The IOAA also states that these charges should pay for the agency services, as much as possible.

Cost recovery policies are explained in OMB Circular No. A-25 (Revised) entitled "User Charges." Part 346 of the Departmental Manual (DM) also provides guidance. The general Federal policy is that a charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the public. (OMB Circular A-25.) The Circular establishes Federal policy regarding fees assessed for government services and for sales or use of government goods or resources. It provides information on the scope and types of activities subject to user charges and the basis upon which agencies set user charges. Finally, the Circular provides guidance for agency implementation of charges and the disposition of collections.

The DOI Manual provides guidance and reflects the OMB cost recovery policy at 346 DM 1.2 A. Under that section, unless prohibited or limited by statute or other authority, BLM must impose a charge that:

1. Recovers the bureau or office costs; and

2. Recovers costs for all categories of service that provide special benefits to an identifiable recipient beyond those which accrue to the public at large.

Certain activities may be exempted from these fees under conditions set out at 346 DM 1.2 C.

In 1996, the Solicitor issued an M Opinion, entitled "BLM's Authority to Recover Costs of Minerals Document Processing" (M-36987, December 5, 1996), which analyzed the law related to BLM's cost recovery authority. In considering how BLM could structure its cost recovery, the Opinion noted, "BLM could decide in certain instances to structure a rule so that a new fee is phased in over a period of time." M-36987 at page 36. This is based on the provision in Section 304(b) of FLPMA (43 U.S.C. 1734 (b)) that the Secretary may consider other factors relevant to determining reasonable costs. (See "What are the FLPMA Factors BLM Must Consider?" below.) In this proposed rule, BLM is proposing to phase in certain fees to give companies adequate time to include all costs in their planning processes.

On December 15, 2000, BLM proposed a rule to amend our mineral resource regulations to increase many fees and to impose new fees to cover our costs of processing certain documents relating to our mineral programs (65 FR 78440). The December 2000 proposed fee changes were BLM's response to recommendations made in a 1988 OIG report (No. 89-25). This report was part of a 1980s presidential initiative that called for all Federal agencies to charge appropriate user fees, consistent with the law, for agency services. The OIG recommended that BLM collect fees for processing mineral-related documents whenever possible.

In this proposed rule, we are reproposing the 2000 fees, and adding the following fees that were not included in the 2000 proposed rule:

1. A processing fee for oil and gas applications for permit to drill (APDs),
2. A processing fee for geothermal permits to drill (GPDs),
3. A processing fee for geothermal exploration permits, and
4. A processing fee for renewal of mineral materials competitive contracts.

We are also proposing to charge a fixed fee for the processing of oil and gas geophysical exploration applications, instead of the case-by-case fee that we proposed in 2000.

For both the 2000 proposed rule and this proposed rule, we updated existing fees. This proposed rule covers only some of the documents for which BLM has the authority to recover processing costs. The BLM intends to continue to

work on establishing and collecting fees for other documents including those addressed in the Solicitor's December 5, 1996, M Opinion on this subject (M-36987). In the future, we expect to identify and propose fees for additional processing activities.

III. Discussion of the Proposed Rule

What Does "Cost Recovery" Mean in This Rulemaking?

"Cost Recovery" means reimbursing BLM for the costs of processing applications and other documents relating to the public lands by charging a fee to the applicant or beneficiary.

What Is the Office of Inspector General (OIG)?

This office, within the DOI, studies Departmental economy and efficiency and makes recommendations for improvement.

What OIG Reports Affected This Rulemaking?

The OIG reports No. 89-25 (1988), No. 92-I-828 (1992), 95-I-379 (1995) and No. 97-I-1300 (1997).

What Did the 1988 OIG Report (No. 89-25) Recommend?

The report recommended that BLM:

1. List all the mineral-related document types for which it had authority to charge BLM processing costs to the applicant;
2. Determine the BLM processing costs for each type of document and count how many were processed;
3. Establish exemption standards and apply them to each type of document on the list;
4. Prepare and maintain exemption documentation for exempted document types; and
5. Establish and collect processing cost fees for all non-exempt types of documents.

How Did BLM Gather Data for Cost Recovery in Response to the 1988 OIG Report?

The BLM first conducted an inventory of about 130 types of documents in all onshore energy and mineral program areas: fluid minerals (including geothermal resources) leasing and operations; solid leasable minerals (coal and non-energy minerals) leasing and operations; mining law administration (locatable minerals); and mineral materials (saleable minerals such as sand and gravel). The BLM used this inventory to determine the types of documents for which it appeared we had authority to collect processing costs.

How Did BLM Analyze Its Costs for Types of Documents That Appeared To Be Eligible for Processing Fees?

We started with a pilot analysis in the BLM Montana State Office and then surveyed all BLM State Offices in 1990. To ensure that the State Offices used the same data-gathering approach, the BLM Washington Office gave all State Offices a copy of Part 346 of the DM, three types of standard forms to record the data, and detailed instructions previously tested for clarity in the Montana Pilot Analysis.

Were There Differences in the Processing Costs and Number of Document Filings Processed for Each State Office?

Yes. The BLM's preliminary review of the data showed large cost differences among offices for processing certain types of documents, as well as big differences in the numbers of documents filed and processed. For example, office processing costs for a mineral materials noncompetitive sale application ranged from \$234 to \$4,773. As discussed below, BLM reconsidered the State Offices' estimated costs for noncompetitive sales applications and determined that the differences in estimates were attributable to unique site- or sale-specific factors.

Similarly, the number of mining law affidavits of assessment filed in State Offices for Fiscal Years (FY) 1988–1990 varied from about 2,761 to 251,564. For certain mineral-related document types, some offices had no activity during the three years sampled.

What Did BLM Do To Reconcile the Differences in the Data?

The BLM decided to use a weighted average rather than a simple average to determine a BLM-wide processing cost for each type of document. This method gave greater weight to the processing cost data from State Offices having a heavy workload, and thus more expertise, in processing a particular type of document.

Between 1995 and 1999, we re-analyzed much of the data, conducted spot checks to verify its continued validity, and adjusted it to current prices. In 2003, we reviewed the processing details for the different types of documents dating from 1995 and determined that the information was current.

What Did the OIG's Follow-Up Report Find?

The report (No. 95–I–379, January 1995) found that, of the five recommendations in the 1988 OIG report, BLM had:

- Implemented the first, third, and fourth recommendations,
- Partially implemented the second recommendation to determine the cost and number of each document filing processed, and
- Not yet implemented the fifth recommendation to establish and collect BLM processing cost fees for non-exempt types of documents.

The OIG sent BLM a draft of this report to which we responded in August 1994. We met with the OIG and discussed issues raised by the report, including the issue of guidance and standards in data gathering. We also provided supplemental information to the OIG in December 1994 to resolve the issue.

What Observations and Recommendations Did the 1995 OIG Report Make?

The OIG noted the wide variations in estimates of the time and cost needed to process types of documents among various BLM State Offices, and made two recommendations to BLM from the draft report. First, BLM should develop document processing standards, request cost information from State Offices based on these standards and analyze and resolve significant differences in the collected data, particularly for types of documents which have major impacts on the total amount of money that BLM can recover. Next, BLM should expedite the establishment and collection of fees for processing types of documents which have major impacts on the total amount of money that BLM can recover, and continue efforts to establish and collect fees for other types of documents.

The report noted that in the supplemental information provided in December 1994, BLM told the OIG that it had developed guidance/standards that were used by all State Offices to achieve uniformity in data gathering and reporting. It pointed out that BLM said we would establish a multi-program team to continue examining fees to establish a consistent cost recovery program. Based on our responses to the draft report, the final 1995 OIG report concluded that both recommendations were resolved but not implemented.

How Did BLM Respond to the 1995 Report?

After the OIG issued the 1995 report BLM created a multi-program team to update its processing cost data, with priority given to establishing and collecting fees for types of documents with a significant impact on the total amount of money that we can recover.

To update the existing data and verify its accuracy, the team gathered new estimates of the number of annual filings, updated processing cost estimates, and assigned BLM mineral experts to review the data in their specialties.

How Did BLM Analyze the 1990 Cost Data for Oil, Gas, and Geothermal in Response to the 1995 OIG Report?

BLM's fluid minerals program re-analyzed this data, comparing the data and identifying the appropriate job position, salary level, and time needed for each step indicated in BLM oil, gas, and geothermal Handbooks to process each type of document. The 1990 data was also based on the steps in the Handbooks. Based on this analysis, we calculated a direct cost (see discussion of direct/indirect costs below) for each step of the process, which was then adjusted to 1995 salary rates without a locality factor. BLM later added indirect costs. We used these cost figures in this proposed rule as the actual cost estimates for oil and gas and geothermal document types, from which the fees were determined. The BLM relied on this method for oil and gas and geothermal because the assigned program expert believed it would yield accurate cost estimates.

How Did BLM Update the 1990 Cost Data for Mineral Materials, Coal, Nonenergy Leasable Minerals, and Mining Law in Response to the 1995 OIG Report?

We spot-checked the data by resubmitting it to selected BLM State Offices that often process these particular categories of documents. We also sent each of these offices a summary of the cost data that the office had previously submitted for these types of documents, along with the BLM-wide weighted average cost for each of them. We requested that the State Offices review the cost data and report whether that data, adjusted to current prices, remained reasonable. We requested that the State Office re-estimate costs for that state if it found the re-examined adjusted cost data to be unreasonable for that point in time. Our re-examination verified that BLM's data continued to be valid and ensured that figures, which varied significantly among offices, had not been submitted in error. We used this method for these programs because our program experts believed it would yield accurate data and be cost-effective. In addition, for mineral materials, the team reconsidered the State Offices' estimated costs for noncompetitive sale applications that the 1995 report had

highlighted. The team determined that the differences among State Offices were largely caused by unique site- or sale-specific factors. BLM considered the amount and nature of surface disturbance, for example, whether the sales are from existing or new pits, and how much material is to be removed; the impact on other surface resources (which may vary even within the same area); and National Environmental Policy Act (NEPA) analysis.

To bring the figures in line with 1999 prices, in preparation for the 2000 proposed rulemaking, BLM adjusted them to the Implicit Price Deflator for Gross Domestic Product (IPD-GDP) for 1998 (the most recent year then available) published by the U.S. Department of Commerce, which economists generally consider to be the most reliable general price index.

How Has BLM Implemented the 1995 OIG Recommendations?

As explained above, BLM resolved the first part of the OIG's first recommendation about what standards we used by sending the OIG information in response to the draft report about our use of concrete standards in data collection. The BLM updated the proposed fees and updated, analyzed, and verified the data, which responded to the second part of the OIG's first recommendation. This rule proposes to implement the first part of the second 1995 OIG recommendation: BLM would collect fees for types of documents that have a significant impact on the amount of money BLM can recover. This proposed rule covers only some of the documents for which BLM has the authority to recover costs. BLM intends to continue our work to establish and collect fees for other documents as well, including those addressed in the Solicitor's December 5, 1996 M Opinion on this subject (M-36987). This satisfies the second part of the OIG's second recommendation.

The 2000 Proposal and This Proposed Rule

The BLM decided to propose the entire rulemaking again because we are proposing a different type of processing fee for oil and gas geophysical exploration applications, and new processing fees for APDs, GPDs, geothermal exploration permits, and mineral materials competitive contract renewals.

BLM has also determined it is appropriate to include an initial fee schedule in the regulations. Fee revisions adjusted for inflation will take place by way of publication in the **Federal Register**, with subsequent

posting on our Web site. For an explanation of how BLM proposes to adjust fees in the future, see "How Did BLM Address Increased Costs Due to Inflation?" below.

What Is the Proposed Processing Fee for Oil and Gas Geophysical Exploration Applications?

In the 2000 proposed rule, we included a case-by-case processing fee for geophysical exploration applications. Since that time, we have implemented an activity-based coding system that allows us to better track such costs. In reviewing the 2000 proposed fees in preparation for this proposed rulemaking, we determined that the costs of processing oil and gas geophysical exploration applications are quite high, averaging approximately \$8,000 to \$10,000.

The BLM determined these amounts by analyzing data we collected for two years (2002 and 2003) through the Management Information System (MIS), BLM's activity-based coding system. One program element in MIS (added in 2001) is dedicated to oil and gas geophysical exploration applications. To determine our costs for oil and gas geophysical exploration applications, we first considered the total cost to a Field Office for processing these applications and divided that number by the total number of geophysical exploration applications processed by that Field Office. We repeated the procedure for each Field Office. However, because we did not receive a significant number of geophysical exploration applications in the two-year period analyzed, we have not determined a final estimated average cost. We will continue to collect and analyze cost data for geophysical exploration applications. At this time we have decided to set a target fee of \$2,500, which we are confident is well below what the final estimated average cost will be, based on the time it takes to complete an environmental assessment and the fieldwork required. Because we propose to phase in this initial fee over several years, as discussed below, we expect to be able to propose a fee based on our final estimated average cost in a new rulemaking by the end of the phase-in period. We considered the other FLPMA factors and determined that the factors would not cause a reasonable fee to be reduced below actual costs except as noted below. (See "*How Did BLM Consider the 'FLPMA Factors?'*" and the discussion following it regarding each factor, below.)

As explained earlier, based on the "other relevant factors" criterion, in

order to allow companies to plan for these potentially significant new costs, we propose to phase in this fee, beginning with a fixed fee of \$500. The geophysical exploration application fee will be raised \$500 each year until it reaches \$2,500 (as adjusted by the IPD-GDP). The base fee will be adjusted for inflation every year by applying the IPD-GDP. The new fee will apply to all applications filed on or after October 1 each year. Further cost analysis will determine the final estimated average cost that will be set through future rulemaking. We invite comment on this proposed rule regarding whether these initial fees are appropriate, or whether they should be higher or lower.

What Is the Proposed Processing Fee for Applications for Geothermal Exploration (e.g., Temperature Gradient Wells)?

The BLM determined the cost of processing geothermal exploration applications by analyzing data we collected for two years (2002 and 2003) through the MIS. One project code (added in 2001) used in conjunction with the program element in MIS (added in 2001) is dedicated to geothermal exploration applications. To determine our costs, we first considered the total cost to a Field Office for processing geothermal exploration applications and divided that number by the total number of geothermal exploration applications processed by that Field Office. We repeated the process for each Field Office. Over those two years, the average cost of processing a geothermal exploration permit application was \$3,200. However, we received only three applications during the two-year period analyzed. Because we believe additional data is required to come up with an accurate cost, we have not determined a final estimated average cost. We will continue to collect and analyze cost data for geothermal exploration applications. At this time we have decided to set a target fee of \$2,500, which we are confident is below what the final estimated average cost will be based on the time required to complete an environmental assessment. Because we propose to phase in this initial fee over several years, as discussed below, we expect to be able to propose a fee based on our final estimated average cost in a new rulemaking by the end of the phase-in period. We considered the other FLPMA factors and determined that the factors would not cause a reasonable fee to be reduced below actual costs except as noted below. (See "*How Did BLM Consider the 'FLPMA Factors?'*" and the

discussion following it regarding each factor, below.)

As explained earlier, based on the "other relevant factors" criterion, in order to allow companies to plan for these potentially significant new costs, we propose to phase in these fees, beginning with a fixed fee of \$500. The geothermal exploration application fee will be raised \$500 each year until it reaches \$2,500 (as adjusted by the IPD-GDP). The base fee will be adjusted for inflation every year by applying the IPD-GDP. The new fee will apply to all applications filed on or after October 1 each year. Further cost analysis will determine the final estimated average cost that will be set through future rulemaking. We invite comment on this proposed rule regarding whether these initial fees are appropriate, or whether they should be higher or lower.

What Is the Proposed Processing Fee for Oil and Gas Applications for Permit To Drill (APDs)?

To determine BLM's costs to process APDs, we analyzed the data we collected for that activity for four years (2001 through 2004) through the MIS. One program element in MIS (added in 2000) is dedicated to processing APDs.

To determine our costs for APDs, we first considered the total cost to a Field Office of processing APDs and divided that number by the total number of APDs processed by that Field Office. We repeated this procedure for each Field Office. We determined that the average cost for Field Offices that process more APDs did not vary significantly from costs for other Field Offices. Therefore, we decided to use the average cost from all field offices as our actual cost figure. Over the four year-year period analyzed, we found that the average cost of processing an APD was about \$4,000.

We considered the other FLPMA factors, and determined that the factors would not cause a reasonable fee for APDs to be reduced below actual costs, except as noted below. (See "*How Did BLM Consider the FLPMA Factors?*" based on the "other relevant factors" criterion explained earlier, and the discussion following each factor, below.) As with oil and gas geophysical exploration, and geothermal exploration, we propose to phase in these fees, beginning with a fixed fee of \$1600, to give companies adequate time to include these potentially significant new costs in their planning processes. The APD fee will be raised \$500 each year until it reaches \$4,000 (as adjusted by the IPD-GDP). The base fee will be adjusted for inflation every year by applying the IPD-GDP. The new fee will apply to all applications filed on or after

October 1 each year. We invite comment on this proposed rule regarding whether these initial fees are appropriate, or whether they should be higher or lower. We also invite comment on what impacts, if any the proposed APD fee could have on the level of a company's operations on Federal lands. In particular, we are interested in how the proposed fee might affect the competitiveness of Federal oil and gas leases as compared to non-Federal leases.

What Is the Proposed Processing Fee for Geothermal Permits To Drill (GPDs)?

We used the same process to determine BLM's costs to process GPDs. We analyzed the data we collected for this activity for three years (2001 through 2003) through the MIS. A project code in MIS (added in 2000) is also dedicated to processing GPDs. We followed the same procedure that we did for APDs and determined that the average cost to process a GPD over the past three years was \$3,500. We considered the other FLPMA factors, and determined that the factors would not cause a reasonable fee for GPDs to be reduced below actual costs, except as noted below. (See "*How Did BLM Consider the FLPMA Factors?*" based on the "other relevant factors" criterion explained earlier and the discussion following each factor, below.) As with oil and gas geophysical exploration and geothermal exploration, we propose to phase in these fees, beginning with a fixed fee of \$1600, to give companies adequate time to include these potentially significant new costs in their planning processes. The GPD fee will be raised \$500 each year until it reaches \$3,500 (as adjusted by the IPD-GDP). The base fee will be adjusted for inflation every year by applying the IPD-GDP. The new fee will apply to all applications filed on or after October 1 each year. We invite comment on this proposed rule regarding whether these initial fees are appropriate, or whether they should be higher or lower.

What Is the Proposed Processing Fee for Mineral Materials Competitive Contracts?

We are proposing to charge a case-by-case fee for applications to renew mineral materials competitive contracts, consistent with the proposed case-by-case fees for mineral materials competitive and noncompetitive sales applications. The option to renew a mineral materials competitive contract was added to the regulations in the final rule that became effective on December 24, 2001 (66 FR 58892).

What Kinds of Fees Would This Rule Create?

This rule would establish fixed fees and fees based on BLM's case-by-case processing costs. A fixed fee remains the same for each document of a particular type. How BLM set these fixed fees is explained below. A fee based on BLM's case-by-case processing costs would be calculated by tracking the ongoing costs of processing an individual document.

As this proposed rule was being prepared for publication, BLM became aware that the case-by-case procedures outlined in proposed section 3000.11 are not appropriate for fees charged to the successful bidder in a lease sale or mineral materials sale context, because in those situations BLM has already performed the work and has tracked its costs for that work. We therefore intend to include in the final rule a different set of procedures for charging a case-by-case fee to the successful bidder in a lease sale or mineral materials sale, which will include a provision allowing the successful bidder to comment on the proposed fee before the fee is made final. These different procedures would apply to the successful applicant for a competitive coal lease (see proposed § 3473.2(f)), a competitive solid minerals lease (see proposed § 33508.21(c)), and a competitive mineral materials sale (see proposed § 3602.44(f)). BLM solicits comments on how it should draft the procedures for charging case-by-case fees to successful bidders.

Are Fixed Fees Appealable?

No. The amount of a fixed fee is not appealable to the Interior Board of Land Appeals because it is set by regulation. There is no discretion to change it.

Does this Proposed Rule Contain Waivers or Reduction of Fixed Fees?

No. We have not included provisions in this proposed rule for waiver or reduction of fixed fees because we believe that such provisions are neither appropriate nor necessary for a rule that would impose fees only on for-profit commercial enterprises. While payment of the proposed fee could reduce an entity's profit level, waiving or reducing the fee for that entity would simply mean that United States taxpayers would bear the costs that the for-profit entity was not bearing. However, we welcome comments on this issue and we will consider further whether to include provisions for waiver or reduction of fixed fees in the final rule.

Are Case-by-Case Fees Appealable?

Yes. Applicants may appeal case-by-case fees to the Interior Board of Land

Appeals in accordance with the Department's appeals rules at 43 CFR part 4, subpart E.

What Are the FLPMA Factors BLM Must Consider?

Section 304(b) of FLPMA lists six factors (known as the FLPMA reasonableness factors) that BLM must consider in deciding what is a reasonable processing fee. They are:

(1) BLM's actual costs to process a document. This does not include management overhead, which means costs of BLM State Directors and Washington Office staff, except when a member of this group works on a specific authorization such as a lease. Actual costs include (but are not limited to) funds spent on special studies, environmental impact statements and other analyses, and monitoring of exploration activities and development, and of construction, operation, maintenance, or termination of an authorized facility.

(2) The monetary value, or objective worth, of the right or privilege that the applicant seeks.

(3) The efficiency with which BLM processes a document, meaning with a minimum of waste by carefully managing agency expenses and time.

(4) Whether any of BLM's processing costs, for actions such as studies or data collection, benefit the general public or the Federal Government, rather than just the applicant. This is referred to in the statute as "benefit of the general public interest."

(5) Whether the project provides any significantly tangible improvement, such as a road, or other direct service to the public. Occasionally, a negative factor, such as an adverse impact on wildlife or surface drainage, may prevent an improvement from being regarded as a public service. Data collection that we need you to perform so we can monitor an activity is not a public service.

(6) Other relevant factors.

How Did BLM Consider the FLPMA Factors for Fees?

We considered each of the FLPMA factors for each type of document for which we are proposing a fixed fee in this rule. The BLM first estimated the actual cost to process a type of document and then considered each of the other FLPMA factors to see if any of them might cause a fee to be set at less than actual cost. If so, we then considered whether any of the remaining factors acted as an enhancing factor that would mitigate against setting the fee at less than actual cost. We then decided the amount of the fee,

which cannot be more than our processing cost. For most minerals actions in this proposal, this method resulted in fees set at our actual processing cost.

BLM would also weigh the FLPMA factors to determine case-by-case fees. For those fees, BLM would give the applicant an estimate of the proposed fee after estimating the actual cost of processing the individual document and considering the other FLPMA factors. The applicant could then comment on the proposed fee. We would consider the applicant's comments and any work to be performed by the applicant, and give the applicant a final fee estimate. We could re-estimate reasonable costs whenever necessary. If the established fee you would pay is less than our actual costs because of one of the FLPMA factors, and we are not able to process the document promptly because of the unavailability of funding or other resources, you would have the option to pay BLM's actual costs to process your document.

In cases (including many environmental impact statements) where BLM might hire a third-party contractor to perform part of the processing, your payment of actual costs would allow BLM to hire the contractor without waiting for the availability of funding. If all processing of your document were to be done by BLM personnel, your place in the queue of documents would not be affected by whether you paid actual (as opposed to reasonable) costs.

In considering the FLPMA factors, we found several trends. First, the monetary value of the right or privilege was much greater than the processing cost. Next, our document processing procedures, which are based on standard steps in internal BLM handbooks, are reasonably efficient.

We also found that none of the studies or data collection performed as part of BLM's document processing significantly benefits the public. The courts have held that processing which an agency is required to perform in connection with a specific request (for example, before approving a permit) provides a special benefit to an applicant, even if it also provides some benefit to the public. See, e.g., *Mississippi Power & Light Co. v. United States Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), cert. denied 444 U.S. 1102 (1980). BLM found that any small benefit to the public provided by the processing of fixed-fee documents in this rulemaking is speculative and outweighed by the monetary value to the applicant of the right or privilege.

In addition, the applicant's project usually provides little or no service to the public. Even if a project provides a small public service, it usually is outweighed by the monetary value to the applicant of the right or privilege. Finally, there rarely are other relevant factors present. Our consideration of the FLPMA factors is explained below:

Actual Costs

Did BLM Consider Figuring and Charging Processing Costs on a Case-by-Case Basis for Every Type of Document?

Yes. We decided not to charge processing costs on a case-by-case basis for every type of document because it would require enormous effort and expense. In addition, when we can reliably estimate costs for routine services, we believe applicants benefit from knowing fees in advance. We would determine costs on a case-by-case basis only for types of documents where the average processing cost may not be a reasonably accurate estimate because costs may differ significantly in each case.

How Does BLM Figure Its Costs To Process a Document?

Actual costs are the sum of both direct and indirect costs. Direct costs include such things as labor, material, and equipment; BLM's measurement of direct costs is explained below. Indirect costs include items such as rent and overhead, excluding State Director and Washington Office management overhead.

For an example of how BLM would determine the sum of direct and indirect costs, assume the measured direct cost of processing a document is \$200. To estimate the indirect cost for processing that document, the BLM office would use a ratio already determined in its accounting system—perhaps, ten to one, meaning for every \$10 of direct costs there would be \$1 of indirect costs. BLM would then estimate the indirect cost using the ratio and direct cost figures. In this example, since the direct cost was \$200 and the ratio is ten to one, the indirect cost is \$20. BLM then would add the direct and indirect cost figures to arrive at the actual cost figure of \$220 to process the document. This method is generally accepted in the private and public sectors.

For What Types of Documents Would BLM Measure Actual Costs on a Case-by-Case Basis?

- Competitive lease applications for coal;
- Royalty rate reduction applications for coal;

- Logical mining unit (LMU) applications and applications for LMU modifications for coal;
- Applications for lease modifications for coal;
- Prospecting permit applications for non-energy leasable minerals;
- Preference right lease applications for non-energy leasable minerals;
- Competitive lease applications for non-energy leasable minerals;
- Royalty rate reduction applications for non-energy leasable minerals;
- Noncompetitive sale applications for mineral materials;
- Competitive sale applications for mineral materials;
- Competitive contract renewal applications for mineral materials;
- Lease or sales applications when an Environmental Impact Statement (EIS) is required;
- Mining plans of operations when an EIS is required; and
- Mineral validity examinations/reports (includes field mapping, field sampling, assays, determination of reserves and marketability, etc.).

What Would Case-by-Case Fee Calculations Include?

They would include all costs we incur while processing your document, such as the costs of studies BLM conducts to comply with legal requirements like environmental laws, the mineral leasing laws, or the Mining Law of 1872. When we conduct a mineral validity examination/report as a result of your application for a plan of operations or mineral patent, or your notice under 43 CFR 3809.301, the mineral examiner would consider the cost to you for the examination and report along with other costs of doing business in evaluating whether you have made a valuable discovery of minerals on the claim. This is because the cost of a mineral exam/report is a business cost similar to the cost of complying with environmental requirements, which may be significant in deciding whether there has been a discovery. See *United States v. Pittsburgh Pacific Co.*, 30 IBLA 388, 84 I.D. 282, 290 (1977); *United States v. Kosanke Sand Corp.*, 12 IBLA 282, 298–99, 80 I.D. 538, 546–47 (1973) (on reconsideration).

Also, although current proposed section 3800.5 refers to applicants for a plan of operations or a mineral patent “under this part,” *i.e.*, 43 CFR part 3800, BLM may provide in the final rule that BLM will also recover costs of validity examinations and reports performed in connection with plan of operation applications that are submitted under other parts of the CFR as well, such as

36 CFR part 9 (which implements the Mining in the Parks Act).

How Would BLM Apply the Proposed Fees to Documents That BLM Is Already Processing?

The BLM would not charge a fixed fee under this rule for processing a document BLM accepted before the effective date of a final rule with the appropriate fees under then-existing rules. Also, if we began processing a document before the effective date of this rule that would be subject to a case-by-case fee, we would charge fees under this rule only for costs incurred after the rule’s effective date.

How Did BLM Measure Its Direct Actual Costs for Types of Documents It Proposes Not To Measure on a Case-by-Case Basis?

We used an agency-wide average cost figure for each type of document. This is a reasonable approximation of our actual processing cost for that document type, as well as an efficient method of measuring the cost.

What Data Did BLM Use to Calculate the Average Cost?

Except for new fees, we used the data collected from State Offices in 1990, as analyzed and updated in 1995–1996 and in 1999. In the areas of oil and gas and geothermal, with the exception of oil and gas geophysical exploration, geothermal exploration, APDs, and GPDs, explained above, we used our re-analyzed direct cost estimate, to which indirect costs were added, as the average cost figure. In other areas, we used the weighted average cost, which included indirect costs, as the average cost figure. As explained above, we adjusted the average cost figures to account for inflation before proposing the rule in 2000. In this proposed rule, we again adjusted the fees to account for inflation, using the IPD–GDP. (See “*How Did BLM Address Increased Costs Due to Inflation?*” below.)

What Processing Steps Are Included in the Fixed Fees?

Oil and Gas

For applications for permit to drill (APDs), fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; assigning case numbers; ascertaining land status; identifying any special land status such as a Wilderness Study Area (WSA) or an Area of Critical Environmental Concern (ACEC); ascertaining the nature and extent of proposed activity, and verifying that the project is technically feasible; surveying impacts on other resources, including environmental

review and field work; and accommodating other land uses, as BLM deems necessary.

For applications for oil and gas geophysical exploration permits, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; assigning case numbers; ascertaining land status; identifying any special land status such as a WSA or an ACEC; ascertaining the nature and extent of proposed activity, and verifying that the project is technically feasible; surveying impacts on other resources, including environmental review and field work; and accommodating other land uses, as BLM deems necessary.

For noncompetitive lease applications, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining land availability; sorting parcels (*i.e.*, developing parcel configuration/acreage); preparing stipulations; preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates.

For competitive lease applications, fixed fees would include, but not be limited to, costs for preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates. At this point, this fee does not include steps leading to sorting parcels, *i.e.*, developing parcel configuration/acreage, and preparing stipulations.

For assignments and transfers, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining assignment and transfer forms; reviewing leases and bonds; and approving, entering, and transmitting updates.

For assignments and transfers due to name changes, corporate mergers, or transfer to an heir or devisee, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests; determining successors-in-interest or other special requirements; reviewing leases and bonds; preparing decisions; and entering and transmitting updates.

For transfers of overriding royalties or payments out of production, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data.

For lease consolidations, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests, lease term conditions and production; preparing new leases and decisions; and entering and transmitting updates.

For lease renewals, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests and lease forms for compliance; preparing decisions; and entering and transmitting updates.

For Class 1 lease reinstatements, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining eligibility; preparing decisions; and entering and transmitting updates.

Geothermal

For applications for GPDs, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; assigning case numbers; ascertaining land status; identifying any special land status such as a WSA or an ACEC; ascertaining the nature and extent of proposed activity and verifying that the project is technically feasible; surveying impacts on other resources, including environmental review and field work; and accommodating other land uses, as BLM deems necessary.

For applications for geothermal exploration permits, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; assigning case numbers; ascertaining land status; identifying any special land status such as a WSA or an ACEC; ascertaining the nature and extent of proposed activity and verifying that the project is technically feasible; surveying impacts on other resources, including environmental review and field work; and accommodating other land uses, as BLM deems necessary.

For noncompetitive lease applications, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining land availability; sorting parcels (*i.e.*, developing parcel configuration/acreage); preparing stipulations; preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates.

For competitive lease applications, fixed fees would include, but not be limited to, costs for preparing sale notices; noting title records; preparing and conducting sale auctions; preparing lease decisions; and entering and transmitting data updates. At this point, this fee does not include steps leading to sorting parcels, *i.e.*, developing parcel configuration/acreage, and preparing stipulations.

For assignments and transfers, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining assignment and transfer forms; reviewing leases and bonds; and approving, entering, and

transmitting updates. For assignments and transfers due to name changes, corporate mergers, or transfer to an heir or devisee, fixed fees would include receiving, validating, and entering data; examining requests; determining successors-in-interest or other special requirements; reviewing leases and bonds; preparing decisions; and entering and transmitting updates.

For lease reinstatements, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining eligibility; preparing decisions; and entering and transmitting updates.

Non-Energy Leasable Minerals

For prospecting permit application amendments, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests and rental payments; and entering and transmitting updates.

For prospecting permit extensions, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests and diligence; and approving, entering, and transmitting updates.

For lease renewals, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data; examining requests; determining changes in bonds and stipulations; preparing decisions; and entering and transmitting updates.

Mining Law Administration

For notices of location, fixed fees would include, but not be limited to, costs for receiving data and validating land status; collecting statutory fees; and entering data. For amendments to a location, fixed fees would include costs for receiving, validating, and entering data.

For a mineral patent adjudication, fixed fees would include, but not be limited to, costs for receiving and entering data; examining mineral surveys, statements required by statute, initial descriptions of geology and mineral evidence, and status of adverse claims; ensuring sufficiency of title evidence (title opinion or abstract with certified copies of location certificates and all amendments); publishing legal notices; receiving and examining final proofs and statements for sufficiency; accepting purchase monies; forwarding the application to the Secretary for review; and issuing decisions. Fixed fees would not include the cost of a mineral examination and report, which would be covered by a case-by-case fee.

For transfers, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data.

BLM's costs are calculated for each transferee if a mining claim or site is transferred to more than one person. It has been BLM's policy to charge this fee for each transferee. We propose to clarify this in § 3833.32(c) by changing the wording from "You as transferee" to "Each transferee."

For affidavits of assessment work, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data.

For notices of intent to hold, fixed fees would include, but not be limited to, costs for receiving, validating, and entering data.

For deferments of assessment work, fixed fees would include, but not be limited to, costs for receiving and entering data; examining requests; determining eligibility; approving or rejecting requests; entering and transmitting updates; and issuing decisions.

For adverse claims, fixed fees would include, but not be limited to, costs for receiving and entering data; examining evidence; accepting or denying claims; and issuing decisions.

For protests, fixed fees would include, but not be limited to, costs for receiving and entering data; examining evidence; and issuing decisions to either dismiss or accept a protest. Fixed fees would not include costs associated with adjudications to correct errors or omissions uncovered by a protest.

How Did BLM Address Increased Costs Due to Inflation?

For this proposed rule we applied the IPD-GDP, discussed above, for the fourth quarter of 2003 to the fees in the 2000 proposed rule to account for inflation. At the time, we began preparing this proposed rule, that information was the most recent data available. Because we did not know when the proposed rule would be published, we did not update the fees again before publication. We will again adjust the fees in this proposed rule by using the IDP-GDP for the fourth quarter of the most recent year available before issuing the final rule.

The BLM proposes to adjust the fees annually to the IPD-GDP, to bring them in line with current costs. We chose this method because the alternative is to collect data periodically to adjust fees to inflation, which is inefficient, costly, and impractical. BLM proposes that it amend the fees by publication in the **Federal Register** and post the adjusted fees on its Web site prior to October 1 each year, and that the posted fees would become effective each year on October 1. BLM selected October 1 as the appropriate date to increase fees and

service charges in the fee schedule because it is the beginning of the fiscal year for government agencies and is the common implementation date for various fees. Because we are proposing to establish the process for changing fees in this rule, and the application of that process is simply a mathematical calculation, a new rulemaking will not be necessary. If we decide to amend fees based on something other than the IPD-GDP, we would do so through proposed notice and comment rulemaking.

We note that some fees for documents in the 2000 proposed rule were not processing fees, but were already-existing filing fees that we did not propose to change. They were included in that proposed rule, and we are proposing to retain them in this proposed rule, because they are part of the section under revision that addresses fees. We also are proposing to adjust the existing filing fees at this time. The Solicitor's Opinion on cost recovery explains, "[n]ominal 'filing' fees * * * serve to limit filings to serious applicants [and] are not intended to reimburse the United States for its processing costs." (M-36987 at p.4) It makes sense to adjust these filing fees periodically to account for inflation as well, so we have applied the IPD-GDP to the filing fees that were included in the 2000 proposed rule. These filing fees will also be adjusted annually using the IPD-GDP, as explained above.

How Did BLM Round Fees?

Although in this proposed rule, we have rounded estimated costs to the nearest dollar, in the final rule we propose to round fees down or up to the nearest \$5, for ease of payment and administration. This is consistent with general business practices.

Might BLM Adjust Its Average Cost Figures and Revise Fees in the Future for Reasons Other Than Inflation?

Yes. The fees in this rule do not include certain internal steps for which we believed costs could not be recovered when we initially collected data. For example, the costs for processing an oil and gas or geothermal competitive lease sale parcel do not include the steps required to prepare an individual sale parcel prior to preparing the sale notice, because we assumed those costs were not recoverable. However, the Solicitor's December 5, 1996 Opinion on cost recovery concluded that we can recover costs for those steps, so in future rules we will propose fees that attempt to capture these costs and other costs not captured here so that fees will accurately reflect our reasonable costs. We may also

amend fees in future rulemakings when we receive new data or have another reason to believe that fees do not accurately reflect reasonable costs. As opposed to simple adjustments for inflation based on the IPD-GDP, any such changes to the fees would be through a notice and comment rulemaking process.

Monetary Value of the Right or Privilege

Did BLM Calculate Exact Figures for the Monetary Value to the Applicant in Setting the Proposed Fixed Fees?

No. We decided not to try to calculate precise dollar values to the applicant of receiving the benefit applied for, either by document type or on a case-by-case basis, because that would involve extensive time and resources. Instead, we made an effort to judge the magnitude of these values. We have used this approach before. For example, in the preamble to the 1986 rights-of-way regulations (51 FR 26836), we considered monetary value in a general sense rather than precise figures.

How Did BLM Consider the Monetary Value of the Right or Privilege Granted by a Fixed Fee Document?

To gauge the monetary value, BLM considered the monetary value of similar rights or privileges, granted to applicants historically. We reviewed each type of document and compared the proposed processing fee for a given type of document with our sense of the historical values of rights or privileges we have granted that are similar to those sought by the applicant. In each case, we believe the value of the right or privilege is clearly so much greater than the processing cost that a fee set at the average actual cost would not significantly affect the proposed action. This is not surprising considering that the costs pertain to documents related to the development of commercial minerals. We did not reduce any fees because of this factor. We would consider the monetary value of the benefit to the applicant for case-by-case fees in a similar manner.

Do Fees Change if Leases Are Found After Exploration To Have Less Value Than Previously Thought?

No. BLM bases its decision about the monetary value of the benefit to the applicant on the value at the time the applicant submits its lease application. All leases have relatively large monetary value before exploration compared to the proposed fees. The basic value of the opportunity provided by a lease to explore for minerals is shown by the

willingness of applicants to pay large sums before exploration for bonus bids, for lease transfers, and for exploration activities such as drilling. We therefore decided that it is reasonable to charge a fee equal to our processing costs for all lease applications.

How Did BLM Consider the Value of Requests for Lease Sales, Requests for Sales, or Expressions of Interest?

In accordance with the Solicitor's December 5, 1996, Opinion on cost recovery, BLM considers that its processing costs to prepare parcels for sale or lease sale benefit three classes of beneficiaries: the party who requests that the parcel be included in the sale or lease sale; all parties who bid on the parcel; and the successful bidder.

While the party who requests that a parcel be included in a sale or lease sale benefits by influencing the selection of parcels offered, BLM believes this benefit is greatly outweighed by the benefit to the bidder who ultimately obtains the lease or sales contract and can develop the minerals on the parcel. Similarly, while all bidders receive the benefit of being considered for a lease or sales contract, BLM believes this benefit is greatly outweighed by the benefits to the bidder who obtains the lease or sales contract. We would therefore charge all processing costs to prepare a parcel for lease or sale to the successful bidder.

The Efficiency Factor

What Did BLM Consider When It Looked at Efficiency in Relation to the Proposed Fixed Fees?

We wanted to ensure that the process of collecting fees is not itself overly costly. For example, we would not collect cost data on a case-by-case basis for each document we process because that kind of cost tracking is simply inefficient—employee tracking time spent on each document just adds to the processing costs. We looked for other ways to establish fees and decided that for most documents in this rulemaking, it was more efficient and sufficiently reliable to set a fixed fee based on our average costs. However, as discussed above, when fixed fees would be unreliable, we would track costs on a case-by-case basis.

Did BLM Determine That the Documents for Which Fees Are Charged in This Rulemaking Are Processed Efficiently?

Yes. BLM based the processing procedures on standardized steps in BLM Handbooks in order to eliminate duplication and extraneous procedures. We developed these detailed and

measurable processing steps to be efficient.

Public Benefit Factor

Are There Some BLM Activities That Only Benefit the Public and Do Not Benefit Any Particular Applicant?

Yes. Activities that only benefit the public are those that are not done in connection with processing a particular document. These would include studies that BLM must perform whether or not it receives an application or other document-processing request, such as land use planning studies and programmatic environmental analyses prepared by an agency at its own instigation. We would not recover the costs of such studies from applicants. Therefore, BLM did not consider studies or data that only benefit the public when it considered the public benefit factor in establishing the fixed fees proposed in this rule.

If Processing a Document Requires That a Study Be Done, Does That Study Always Benefit the Applicant?

Yes. Courts have held that when processing an application requires a study, then the performance of that study necessarily benefits the applicant. See, e.g., *Mississippi Power & Light Co. v. United States Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), cert. denied 444 U.S. 1102 (1980). The most obvious benefit is that the agency may approve the application, allowing the applicant to operate. That is, if a study is required, we cannot approve an application unless the study is performed, and if we do not approve an application, the applicant cannot take the action for which it seeks approval.

Such studies can provide other potential benefits to an applicant, as the preamble to BLM's 1986 rights-of-way regulations pointed out:

Public comment on environmental issues often helps to [defuse] political opposition to a project. An environmental impact statement may uncover an environmentally acceptable alternative which may allow an otherwise unacceptable project to be built. Special studies of seismic and climatic conditions sometimes reveal that the applicant's original proposal would not meet necessary engineering standards or is otherwise flawed. When an accident is prevented or money saved because higher standards are used, an applicant benefits because the [project] is not interrupted. These types of benefits are difficult to measure and may not be apparent until after a project has been completed and has operated for many years (51 FR 26836, 26837–38).

These benefits of environmental studies are also applicable to minerals actions. Although they are speculative, substantial benefits such as these can exist.

How Did BLM Consider the Public Benefit From Its Document Processing?

Possible public benefits from BLM processing activities such as studies or data collection are also speculative. For example, studies related to document processing often provide information about an area's natural resources, and this is sometimes a public benefit, but the value of the information, or whether there will be a benefit at all, is not predictable. BLM concluded that document processing for types of fixed fee documents in this rulemaking does not usually produce studies or data significantly beneficial to the public.

In addition, except for fees determined on a case-by-case basis, BLM determined that for each type of document in this rulemaking the monetary value to the applicant outweighs the possible benefit of such studies to the public. The BLM analysts used their knowledge of the historical values of such cases to make these determinations. We have therefore decided that this factor does not warrant setting any fee in this rulemaking at less than its actual processing cost.

Public Service Factor

How Is a Project's Service to the Public (Public Service) Different From Benefits the General Public Derives From BLM's Processing (Public Benefit)?

A project's service to the public concerns whether the applicant's project itself, as opposed to BLM's processing the related documents, provides some significant direct service or benefit to the general public. This is referred to in the statute as public service. Examples would be improvements such as roads, trails, or recreation facilities. Occasionally, a negative factor, such as an adverse impact on wildlife or surface drainage, may prevent BLM from regarding an improvement as a public service.

Does Exploration Data Shared With the Government for Purposes Other Than Monitoring Constitute a Public Service?

Yes. Applicants for prospecting permits for non-energy minerals are required to share with the government the mineral resource data they derive from exploration. However, if the information is valuable for mineral development, we expect the prospecting permit holder would use it. In that case,

the monetary value of the information to the permittee would outweigh its value to the public.

We considered the suggestion that even information that is not valuable to the prospecting permit holder for mineral development might still provide some geological or geophysical information of value to the government, which BLM could sometimes use for some types of resource management such as land classifications. However, because there is very little information obtained in this way and because its use is unpredictable, the potential benefits of the information to the public are too small to warrant an adjustment to the proposed fee.

Do Projects in This Proposed Rule Subject to a Fixed Fee Generally Provide a Public Service?

No. Large projects could include road construction, but such roads are rarely open to the public or built to public safety standards. In addition, they eventually must be removed. Consequently, for fixed fee documents, the likelihood of providing such a public service is too remote and speculative to warrant charging a fee less than actual costs. If any projects do provide such a public service, it is more likely to be those that require an environmental impact statement. For those projects, we will consider all of the reasonableness factors, including public service, on a case-by-case basis.

Other Factors

Are There Any Other Factors That Made It Reasonable To Set a Fee in This Proposed Rulemaking at Less Than Actual Cost?

Yes. Protests of mineral patent applications provide a benefit to BLM by affording us an opportunity to review the protestor's concerns and ensure that the applicant has complied with the law. Therefore, BLM proposes to set the fee for processing patent protests at \$53, which is less than BLM's actual processing cost of \$271. In addition, as explained above, BLM decided to phase in the fees for APDs and GPDs, as well as for geothermal and oil and gas geophysical exploration applications to allow the industry time to include these costs in their planning process.

The BLM did not find other factors that made it reasonable to adjust fees in this proposed rulemaking. When BLM charges fees on a case-by-case basis, applicants could raise other factors during the fee-setting process.

TABLE 1.—PROPOSED FEES FOR FY 2006

[Note that fees will be adjusted annually by publication in the FEDERAL REGISTER for inflation according to the IPD–GDP and posted on BLM's Web site. Revised fees are effective each October 1]

Document/action	Existing fee	Proposed fees in 2000 rule	Fees based on implicit price deflator 4th Qtr 2003 (106.244) indexed to 2000	Proposed fee
Oil and Gas (Group 3100)				
Noncompetitive lease application	\$75	\$305	\$324.04	\$324
Competitive lease application	75	120	127.49	127
Assignment and transfer	25	70	74.37	74
Overriding royalty transfer, payment out of production	25	9	9.56	10
Name change, corporate merger or transfer to heir/devisee	0	160	169.99	170
Leases consolidation	0	335	355.92	356
Lease renewal or exchange	75	305	324.04	324
Lease reinstatement, Class I	25	60	63.75	64
Leasing under right-of-way	75	305	324.04	324
Geophysical exploration notice of intent—outside Alaska	0	Case-by-case	N/A	500
Geophysical exploration permit application—Alaska	25	Case-by-case	N/A	500
Application for Permit to Drill APD)	0	Not included ..	N/A	1600
Geothermal (Group 3200)				
Noncompetitive lease application	75	305	324.04	324
Competitive lease application	0	120	127.49	127
Assignment and transfer of record title or operating right	50	70	74.37	74
Name change, corporate merger or transfer to heir/devisee	0	160	169.99	170
Lease consolidation	0	335	355.92	356
Lease reinstatement	0	60	63.75	64
Exploration operations permit application	0	Not included ..	N/A	500
Geothermal Permit to Drill (GPD)	0	Not included ..	N/A	1600
Coal (Group 3400)				
License to mine application	10	10	10.62	11
Exploration license application	250	250	265.68	266
Lease or lease interest transfer	50	50	53.12	53
Competitive coal lease	250	Case-by-case	N/A	Case-by-case
Coal lease modification	250	Case-by-case	N/A	Case-by-case
Logical mining unit formation or modification	0	Case-by-case	N/A	Case-by-case
Royalty reduction application	0	Case-by-case	N/A	Case-by-case
Nonenergy Leasable (Group 3500)				
Applications other than those listed below	25	25	26.57	27
Prospecting permit application amendment	0	50	53.12	53
Extension of prospecting permit	25	80	85.00	85
Lease renewal	25	390	414.35	414
Prospecting permit application	25	Case-by-case	N/A	Case-by-case
Preference right lease application	0	Case-by-case	N/A	Case-by-case
Successful competitive lease	0	Case-by-case	N/A	Case-by-case
Application to suspend, waive or reduce your rental, minimum royalty, production royalty or royalty rate.	0	Case-by-case	N/A	Case-by-case
Future or fractional interest lease application	25	Case-by-case	N/A	Case-by-case
Mineral Materials Disposal (Group 3600)				
Noncompetitive sale (excluding sales from community pits or common use areas).	0	Case-by-case	N/A	Case-by-case
Competitive sale	0	Case-by-case	N/A	Case-by-case
Competitive contract renewal	0	N/A	N/A	Case-by-case
Mining Law Administration (Group 3800)				
Notice of Location ¹	10	15	15.94	16
Amendment of location	5	10	10.62	11
Transfer of mining claim/site	5	10	10.62	11
Recording an annual FLPMA filing (§ 3835.30)	5	10	10.62	11
Deferment of Assessment	25	80	85	85
Mineral Patent Adjudication	1st claim—\$250; Each additional claim—\$50.	2,290	2,433.00	2,433
Adverse claim	10	80	85	85

TABLE 1.—PROPOSED FEES FOR FY 2006—Continued

[Note that fees will be adjusted annually by publication in the FEDERAL REGISTER for inflation according to the IPD—GDP and posted on BLM's Web site. Revised fees are effective each October 1]

Document/action	Existing fee	Proposed fees in 2000 rule	Fees based on implicit price deflator 4th Qtr 2003 (106.244) indexed to 2000	Proposed fee
Protest	10	50	53.12	53
Mineral Patent Exam Report Requiring an EIS	0	Case-by-case	N/A	Case-by-case
3809 Plan of Operations or Notice with EIS	0	Case-by-case	N/A	Case-by-case
3809 Plan of Operations, Notice of Mineral Patent with Validity Exams ..	0	Case-by-case	N/A	Case-by-case

¹ The existing fee for recording a mining claim or site location (43 CFR 3833) is a total of \$165. This includes the initial maintenance fee of \$125 and one time \$30 location fee required by Statute and a \$10 service charge. The service charge would become a processing fee and would increase to \$16 under the proposed rule making the total fee \$171. In the 2005 Department of the Interior Related Agencies Appropriations Act, Congress required that the \$125 maintenance fee be lowered to \$100 for mining claims or sites that are recorded with BLM on or after December 8, 2004 until BLM establishes a nationwide permit tracking system and files a report with Congress, at which point the fee will revert to \$125.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

OMB has determined that this proposed rule is a significant regulatory action under Executive Order 12866. BLM has determined that the proposed rule will not have an annual effect on the economy of \$100 million or more. It will not 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. This determination is based on the analysis that BLM prepared in conjunction with this proposed rule. Please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT:** section above for instructions on how to view a copy of the analysis.

This rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This proposed rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that would not change with this proposed rule.

In addition, this proposed rule would not materially affect the budgetary impact of entitlements, grants, loan programs, or the rights and obligations of their recipients. However, this rule does propose to increase existing fees, and create new fees, for processing documents associated with the onshore minerals programs because of recommendations made by the OIG (Report Nos. 89–25, 92–I–828, 95–I–379, and 97–I–1300) as well as the IOAA of 1952, 31 U.S.C. 9701, and FLPMA, 43 U.S.C. 1734. As stated earlier in this preamble, the IOAA and section 304 of

FLPMA authorize BLM to charge applicants the cost of processing documents. In addition, the IOAA states that these charges should cover the agency's costs for these services to the degree practicable. OMB Circular A–25 and the Department Manual require the collection of processing fees.

The OIG reports documented the budgetary impact of delaying collection of fees to reimburse agency costs and strongly admonished BLM to collect the fees proposed in this rule. Finally, although this rule will not raise novel legal issues, it may raise novel policy issues because under this rule we would charge processing fees that we do not currently impose.

Regulatory Flexibility Act

This proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. For the purposes of this section, a small entity is defined by the Small Business Administration (SBA) for mining (broadly inclusive of metal mining, coal mining, oil and gas extraction, and the mining and quarrying of nonmetallic minerals) as an individual, limited partnership, or small company considered to be at arm's length from the control of any parent companies, with fewer than 500 employees. The SBA defines a small entity differently, however, for leasing Federal land for coal mining: a coal lessor is a small entity if it employs not more than 250 people, including people working for its affiliates. The SBA would consider many of the operators the BLM works with in the onshore minerals programs to be small entities. The BLM notes that this proposed rule does not affect service industries, for

which the SBA has a different definition of "small entity."

The proposed rule will affect a large number of small entities since nearly all of them will face fee increases for activities on public lands. However, we have concluded that the effects will not be significant. As presented in the analysis prepared by BLM, and available as an attachment to the Record of Compliance for this proposed rule, except for mineral materials, when the total fees paid by these entities are expressed as a percentage of their sales value it is clear that the relative size and effect of the fees are very small and that they will have no measurable effect on these entities. We completed a threshold analysis which is available for public review in the administrative record for the rule. Please contact one of the persons listed in the **FOR FURTHER INFORMATION CONTACT:** section above for instructions on how to view a copy of the analysis.

For example, when the total fee increases are compared to the oil and gas receipt data, the fee increases are 0.34 percent of receipts from Federal lands. Assuming the burden of the fee increases are distributed evenly among all firms operating on Federal lands the fee increases would be 1.50 percent of receipts attributable to small entities. The proposed fee increases for oil and gas filings range from \$39 to \$4000 (when fees are fully phased-in). These fee increases will not cause a significant impact on the small entities working in the oil and gas industry on Federal lands.

In the area of mineral materials, the proposed fee increases only apply to exclusive mineral materials sales. The proposed fee increases do not apply to nonexclusive sale applications (community pits and common use areas) or to free use permit applications. The proposed fee increases are estimated to

be 25.65 percent of the reported production value for exclusive mineral materials sales. Assuming the burden of the fee increases is distributed evenly among all firms operating on Federal lands, the fee increases for exclusive mineral materials sales would be 48.4 percent of receipts attributable to small entities. Without further analysis, these percentages would suggest the potential of a significant impact on operators, including small entities, operating on Federal lands. However, a number of factors mitigate this potential impact.

The most significant factor in mitigating the potential impact of the proposed fee increases is that mineral materials are sold for fair market value. To the extent the proposed fee increases the cost of obtaining mineral materials from BLM, the appraised value will reflect these higher costs. Any fee increases will be offset by lower appraised values resulting in no effect on operators, including small entities, on Federal lands.

Additionally, for mineral materials, based on data for Fiscal Years 96, 97, and 98 (the most recent data available), this proposed rule would affect on average only about 13.5 percent of the disposals on public lands. The rule would not affect the remaining 86.5 percent of disposals, consisting of non-exclusive sales. Although exclusive sales applications account for only about 13.5 percent of all filings, the value of the material sold to the operators was 57 percent of all mineral materials sold by BLM. In short, these exclusive sales are generally for larger, high value operations.

Finally, all proposed fee increases for mineral materials filings are to be determined on a case-by-case basis. The applicant/operator has the opportunity to present data to BLM on the reasonableness of the fees. For exclusive sale applications involving a small operation, the monetary value factor (FLPMA factor 2—"the monetary value of the rights or privileges sought") may affect the amount of the fee. In addition, non-exclusive sales continue to be an option for small entities that wish to obtain mineral materials while avoiding the fees associated with exclusive sales.

We note that in all areas, most of the proposed fees are charged only once and, therefore, generally the impact is spread over several years of industry production. This has the effect of lessening the impact even further. In addition, as with mineral materials, lease sales are for fair market value, so we can expect bonus bids to decline in response to the new or increased costs.

The amount of the proposed fee increases calls for a discussion about

mineral patent adjudication and associated mineral examination fees and their possible effect on small entities. These fees apply to hardrock mineral patent applications under the Mining Law of 1872, which, when approved, result in a transfer of title from the United States to the mining claimant. Patenting is a voluntary process and is not required under the law. Mining claimants who have found a valuable mineral discovery on the public lands and properly located a claim may mine and market the minerals on the claim without a patent and without paying any royalties to the United States.

Fixed fees for mineral patent applications are set in this proposed rule at \$2,433 for adjudication of title and sufficiency of the application, plus a case-by-case fee for the actual mineral examination of the mining claims or sites in the application. Although this is an appreciable increase, it is not significant compared to the capital expenditures associated with many hardrock mining ventures, which may range from hundreds of thousands of dollars for small operations to hundreds of millions of dollars for large ventures. The smaller the entity, the more likely it is that the application will seek to patent fewer mining claims, reducing the time needed for BLM's mineral examination. Because fees for the mineral examination are based largely on a case-by-case tracking of our actual time and the costs to us, applications with fewer claims will generally be charged fees at the low end of the possible range.

Since 1994, every Interior Appropriations Act has contained a moratorium for processing any new mineral patent applications. Because of the patenting moratorium, future activity in the adjudication and mineral examination of mineral patent applications is expected to decline significantly in the near future. Therefore, these fees will be applied rarely. Moreover, because claimants have a recognized property interest in a valid unpatented mining claim and can enjoy the benefits of mining and marketing from their claims without ever applying for a patent, a claimant could avoid these fees simply by not filing a patent application even if future appropriation acts did not contain a moratorium.

For many document types, BLM will establish charges on a case-by-case basis. In these situations, the applicant/operator has the opportunity to present data to BLM on the reasonableness of the fees using the FLPMA factors. If, for example, the entity is small and has a small operation, the monetary value

factor may cause BLM to reduce the fee(s). When the entity is small but has large operations that are high in monetary value, it must have access to large amounts of capital and the increased fees will not have a significant detrimental effect. In any case, the entities may appeal case-by-case fees if they believe BLM is being unreasonable in its calculations.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a "major rule" as defined at 5 U.S.C. 804(2). The proposed rule would not have an annual effect on the economy greater than \$100 million; it would not result in major cost or price increases for consumers, industries, government agencies, or regions; and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. We completed a threshold analysis, which is available for public review in the administrative record for the rule.

Unfunded Mandates Reform Act

The BLM has determined that this proposed rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. Section 1532, because it will not result in state, local, private sector, or tribal government expenditures of \$100 million or more in any one year. This proposed rule will not significantly or uniquely affect small governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Executive Order 12630, Government Actions and Interference With Constitutionally Protected Property Rights

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The rule has no bearing on property rights, but only concerns recovery of government processing costs for actions that benefit certain entities that acquire rights and extract publicly owned resources. Therefore, the DOI has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, the proposed rule does not have significant effects on federalism, and

therefore a federalism assessment is not required. The proposed rule does not change the role or responsibilities between Federal, state, and local government entities. The rule does not relate to the structure and role of states and will not have substantial, direct effects on states. It may result in a slight decrease in bonus bids, which BLM shares with the states and other revenue recipients. However, the effect would be negligible over the life of a lease.

Executive Order 13175, Consultation, and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, BLM has determined that this proposed rule would not include policies that have tribal implications. A key factor is whether the rule would have substantial direct effects on one or more Indian tribes. The BLM has not found any substantial direct effects. Consequently, BLM did not utilize the consultation process set forth in section 5 of the Executive Order.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The BLM consulted with DOI's Office of the Solicitor throughout the drafting process.

Paperwork Reduction Act

This rule does not contain information collection requirements that the OMB must approve at this time under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This rule potentially affects the following information requirements approved under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*:

1004-0025, Mineral Surveys, Mineral Patent Applications, Adverse Claims, Protests, and Contests;

1003-0034, Oil and Gas Lease Transfers;

1004-0073, Coal Management;

1004-0074, Oil and Gas and Geothermal Resources Leasing;

1004-0103, Mineral Materials Disposal;

1004-0114, Payment and Recordation of Location Notices and Annual Filings for Mining Claims, Mill Sites, Tunnel Sites;

1004-0121, Leasing of Solid Minerals Other Than Coal and Oil Shale;

1004-0132, Geothermal Leasing Reports and Resources Leasing and Drilling Operations;

1004-0137, Requirements for Operating Rights Owners and Operators; 1004-0145, Oil and Gas Exploration and Leasing;

1004-0162, Oil and Gas Geophysical Exploration Operations;

1004-0169, Use and Occupancy under the Mining Laws;

1004-0185, Onshore Oil and Gas Exploration, Leasing and Drainage Operations;

1004-0194, Surface Management Activities Under the General Mining Law.

This rule affects the information collections just listed not by decreasing or increasing the information requirements described in these collections but by establishing or changing the costs of filing the applications and reports included in these collections. When this rule becomes final, BLM will file change notices with the OMB, Form 83c, to reflect the new or changed fees established by the final rule.

National Environmental Policy Act

The BLM has determined that this proposed rule is administrative and involves only procedural changes addressing fee requirements. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the NEPA, pursuant to 516 DM 2.3A and 516 DM 2, Appendix 1, Item 1.10.

In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2. Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the Department of the Interior, the term 'categorical exclusions' means categories of actions which do not individually or cumulatively have a significant effect on the human environment and which have no such effect in procedures adopted by a Federal agency and therefore require neither an environmental assessment nor an environmental impact statement.

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

In accordance with Executive Order 13211, BLM finds that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this proposed rule.

Clarity of the Regulations

Executive Order No. 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: Are the requirements in the proposed regulations clearly stated? Do the proposed regulations contain technical language or jargon that interferes with their clarity?

Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "\$" and a numbered heading, for example: **§ 3000.10 What do I need to know about fees in general?**)

Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Authors

The principal authors of this rule are Tim Spisak from the Fluid Minerals Group, and the Solid Minerals Group. They were assisted by the Office of the Solicitor and Cynthia Ellis of the Regulatory Affairs Group, Bureau of Land Management, Department of the Interior, 1620 L Street NW., Room 401 Washington, DC 20036; Telephone (202) 452-5030.

Dated: June 28, 2005.

Rebecca W. Watson,
Assistant Secretary, Land and Minerals Management.

List of Subjects

43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3100

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

43 CFR Part 3110

Government contracts, Oil and gas exploration, Public lands—mineral

resources, Reporting and recordkeeping requirements.

43 CFR Part 3120

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

43 CFR Part 3130

Alaska, Government contracts, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3150

Administrative practice and procedures, Alaska, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians-lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, reporting and recordkeeping requirements.

43 CFR Part 3200

Environmental protection, Geothermal energy, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3470

Coal, Government contracts, Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

43 CFR Part 3500

Government contracts, Hydrocarbons, Mineral royalties, Mines, Phosphate, Potassium, Public lands—mineral resources, Reporting and recordkeeping requirements, Sodium, Sulfur, Surety bonds.

43 CFR Part 3600

Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3800

Administrative practices, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements, and Wilderness areas.

43 CFR Part 3830

Mineral royalties, Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3833

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3835

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3836

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3860

Mines, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 3870

Public lands—mineral resources, Adverse claims, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble and the authorities stated below BLM amends parts 3000, 3100, 3120, 3130, 3150, 3160, 3200, 3470, 3500, 3600, 3800, 3830, 3833, 3835, 3836, 3860, and 3870 of Title 43 of the Code of Federal Regulations (Groups 3000, 3100, 3200, 3400, 3500, 3600, 3800) as set forth below:

SUBCHAPTER C—MINERALS MANAGEMENT (3000)

PART 3000—MINERALS MANAGEMENT GENERAL

1. The authority citation for part 3000 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, and 351–359; 30 U.S.C. 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat., 357.

Subpart 3000—General

2. Add § 3000.10 to read as follows:

§ 3000.10 What do I need to know about fees in general?

(a) You must include the required fees with documents you file under this subchapter. Fees may be statutorily set fees, relatively nominal filing fees, or processing fees intended to reimburse BLM for its reasonable processing costs. For processing fees, BLM takes into account the factors in section 304 (b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1734(b)) before deciding a fee. The BLM considers the factors for each type of

document when the processing fee is a fixed fee and for each individual document when the fee is decided on a case-by-case basis, as explained in 43 CFR 3000.11.

(b) BLM will not accept a document that you submit without the proper filing or processing fee amounts except for documents where BLM sets the fee on a case-by-case basis. Fees are not refundable except as provided for case-by-case fees in 43 CFR 3000.11. BLM will keep your fixed filing or processing fee as a service charge even if we do not approve your application or you withdraw it completely or partially.

(c) We will periodically adjust fees established in this subchapter according to the Implicit Price Deflator for Gross Domestic Product, which is published annually by the U.S. Department of Commerce for the previous year. Because the fee recalculations are simply based on a mathematical formula, we will change the fees in final rules without opportunity for notice and comment.

(d) We will not charge a fixed fee under this rule for processing a document BLM accepted before the effective date of this final rule with the appropriate fees under then-existing rules.

3. Add § 3000.11 to read as follows:

§ 3000.11 When and how does BLM charge me processing fees on a case-by-case basis?

(a) Fees in this subchapter are designated either as case-by-case fees or as fixed fees. The fixed fees are established in this subchapter for specified types of documents. However, if BLM decides at any time that a particular document designated for a fixed fee will have a unique processing cost, such as the preparation of an Environmental Impact Statement, we may set the fee under the case-by-case procedures in this section.

(b) For case-by-case fees, BLM measures the ongoing processing cost for each individual document and considers the factors in section 304(b) of FLPMA on a case-by-case basis according to the following procedures:

(1) You may ask BLM's approval to do all or part of any study or other activity according to standards BLM specifies, thereby reducing BLM's costs for processing your document.

(2) Before performing any case processing, we will give you a written estimate of the proposed fee for reasonable processing costs after we consider the FLPMA section 304(b) factors.

(3) You may comment on the proposed fee.

(4) We will then give you the final estimate of the processing fee amount after considering your comments and any BLM-approved work you will do.

(i) If we encounter higher or lower processing costs than anticipated, we will re-estimate our reasonable processing costs following the procedure in paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) of this section.

(ii) If the established fee you would pay is less than BLM's actual costs as a result of consideration of the FLPMA section 304(b) factors, and we are not able to process your document promptly because of the unavailability of funding or other resources, you will have the option to pay BLM's actual costs to process your document. This will enable BLM to process your document sooner. Once processing is complete, we will refund to you any money that we did not spend on processing costs.

(5) (i) We will periodically estimate what our reasonable processing costs

will be for a specific period and will bill you for that period. Payment is due to BLM 30 days after you receive your bill. BLM will stop processing your document if you do not pay the bill by the date payment is due.

(ii) If a periodic payment turns out to be more or less than BLM's reasonable processing costs for the period, we will adjust the next billing accordingly or make a refund. Do not deduct any amount from a payment without our prior written approval.

(6) You must pay the entire fee before we will issue the final document.

(7) You may appeal BLM's estimated processing costs in accordance with 43 CFR part 4. We will not process the document further until the appeal is resolved, in accordance with paragraph (b)(5)(i) of this section, unless you pay the fee under protest while the appeal is pending. If the appeal results in a decision changing the proposed fee, we

will adjust the fee in accordance with paragraph (b)(5)(ii) of this section.

(c) If we began processing a document subject to a case-by-case fee before the effective date of this rule, we will charge fees only for costs we incur after the effective date.

4. Add § 3000.12 to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that you must pay to BLM for the services listed for Fiscal Year 2006. These fees are nonrefundable. Fees will be adjusted annually for inflation according to the Implicit Price Deflator for Gross Domestic Product (IPD-GDP) by way of publication of a document in the **Federal Register** and will subsequently be posted on the BLM Web site (<http://www.blm.gov>) before October 1 each year. Revised fees are effective each year on October 1.

FY 2006 PROCESSING FEE TABLE

Document/action	Fee
Oil and Gas (Parts 3100, 3100, 3110, 3120, 3130, 3150, 3160)	
Noncompetitive lease application	\$324
Competitive lease application	127
Assignment and transfer	74
Overriding royalty transfer, payment out of production	10
Name change, corporate merger or transfer to heir/devisee	170
Leases consolidation	356
Lease renewal or exchange	324
Lease reinstatement, Class I	64
Leasing under right-of-way	324
Geophysical exploration notice of intent—outside Alaska	500
Geophysical exploration permit application—Alaska	500
Application for Permit to Drill (APD)	1,600
Geothermal (Part 3200)	
Noncompetitive lease application	324
Competitive lease application	127
Assignment and transfer of record title or operating right	74
Name change, corporate merger or transfer to heir/devisee	170
Lease consolidation	356
Lease reinstatement	64
Exploration operations permit application	500
Geothermal Permit to Drill (GPD)	1,600
Coal (Parts 3400, 3470)	
License to mine application	11
Exploration license application	266
Lease or lease interest transfer	53
Leasing of Solid Minerals Other Than Coal and Oil Shale (Part 3500)	
Applications other than those listed below	27
Prospecting permit application amendment	53
Extension of prospecting permit	85
Lease renewal	414
Mining Law Administration (Parts 3800, 3830, 3850, 3860, 3870)	
Notice of Location *	16
Amendment of location	11
Transfer of mining claim/ site	11

FY 2006 PROCESSING FEE TABLE—Continued

Document/action	Fee
Recording an annual FLPMA filing (§ 3835.30)	11
Deferment of Assessment	85
Mineral Patent Adjudication	2,433
Adverse claim	85
Protest	53

* The existing fee for recording a mining claim or site location (43 CFR 3833) is a total of \$165. This includes the initial maintenance fee of \$125 and one-time \$30 location fee required by Statute and a \$10 service charge. The service charge would become a processing fee and would increase to \$16 under the proposed rule making the total fee \$171. In the 2005 Department of the Interior Related Agencies Appropriations Act, Congress required that the \$125 maintenance fee be lowered to \$100 for mining claims or sites that are recorded with BLM on or after December 8, 2004 until BLM establishes a nationwide permit tracking system and files a report with Congress, at which point the fee will revert to \$125.

(b) The fee schedule will be posted on the BLM Web site (<http://www.blm.gov>). It will also be available at BLM State and field offices.

(c) The amount of a fixed fee is not subject to appeal to the Interior Board of Land Appeals pursuant to 43 CFR part 4, subpart E.

PART 3100—OIL AND GAS LEASING

5. The authority citation for part 3100 is revised to read as follows:

Authority: 30 U.S.C. 181 *et seq.* and 351–359; and 43 U.S.C. 1701 *et seq.*

Subpart 3105—Cooperative Conservation Provisions

6. Amend § 3105.6 by revising the first sentence and adding a new sentence after the first sentence to read as follows:

§ 3105.6 Consolidation of leases.

BLM may approve consolidation of leases if it determines that there is sufficient justification and it is in the public interest. Each application for a consolidation of leases must include payment of the processing fee found in the fee schedule in 43 CFR 3000.12.
* * *

Subpart 3106—Transfers by Assignment, Sublease, or Otherwise

7. Revise § 3106.3 to read as follows:

§ 3106.3 Fees.

Each transfer of record title or of operating rights (sublease) for each lease must include payment of the processing fee found in the fee schedule in 43 CFR 3000.12. Each request for a transfer to an heir or devisee, request for a change of name, or notification of a corporate merger under 43 CFR 3106.8, must include payment of the processing fee found in the fee schedule in 43 CFR 3000.12. Each transfer of overriding royalty or payment out of production must include payment of the processing fee found in the fee schedule in 43 CFR

3000.12 for each lease to which it applies.

8. Amend § 3106.4–3 by revising paragraph (d) to read as follows:

§ 3106.4–3 Mass transfers.

* * * * *

(d) Include with your mass transfer the processing fee payment found in the fee schedule in 43 CFR 3000.12 for each such interest transferred for each lease.

9. Amend § 3106.8–1(a) by removing the sentence “No filing fee is required.” and adding in its place a new sentence to read as follows:

§ 3106.8–1 Heirs and devisees.

(a) * * * Include the processing fee payment found in the fee schedule in 43 CFR 3000.12 with your request to transfer lease rights. * * *

* * * * *

10. Amend § 3106.8–2 by removing the sentence “No filing fee is required.” and adding in its place a new sentence to read as follows:

§ 3106.8–2 Change of name.

* * * Include the processing fee payment found in the fee schedule in 43 CFR 3000.12 with your notice of name change. * * *

11. Amend § 3106.8–3 by removing the sentence “No filing fee is required.” and adding in its place a new sentence to read as follows:

§ 3106.8–3 Corporate merger.

* * * Include the processing fee payment found in the fee schedule in 43 CFR 3000.12 with your notification of a corporate merger. * * *

Subpart 3107—Continuation, Extension or Renewal

12. Amend § 3107.7 by removing the next to the last sentence and adding in its place two new sentences to read as follows:

§ 3107.7 Exchange leases: 20-year term.

* * * The lessee must file an application to exchange a lease for a new lease, in triplicate, at the proper

BLM office. The application must show full compliance by the applicant with the terms of the lease and applicable regulations, and must include a payment of the processing fee found in the fee schedule in 43 CFR 3000.12.
* * *

13. Revise § 3107.8–2 to read as follows:

§ 3107.8–2 Application.

File your application to renew your lease in triplicate in the proper BLM office at least 90 days, but not more than 6 months, before your lease expires. Include the processing fee payment found in the fee schedule in 43 CFR 3000.12.

Subpart 3108—Relinquishment, Termination, Cancellation

14. Amend § 3108.2–2(a) by revising the first sentence of paragraph (a) (3) to read as follows:

§ 3108.2–2 Reinstatement at existing rental and royalty rates: Class I reinstatements.

(a) * * *

(3) A petition for reinstatement, the processing fee found in the fee schedule in 43 CFR 3000.12, and the required rental, including any back rental that has accrued from the date of the termination of the lease, are filed with the proper BLM office within 60 days after receipt of Notice of Termination of Lease due to late payment of rental.
* * *

* * * * *

Subpart 3109—Leasing Under Special Acts

15. Revise § 3109.1–2 by removing the first three sentences and adding in their place four new sentences to read as follows:

§ 3109.1–2 Application.

No approved form is required for an application to lease oil and gas deposits underlying a right-of-way. The right-of-way owner or his/her transferee must file the application in the proper BLM

office. Include the processing fee payment found in the fee schedule in 43 CFR 3000.12. If the transferee files an application, it must also include an executed transfer of the right to obtain a lease. * * *

PART 3110—NONCOMPETITIVE LEASES

16. The authority citation for part 3110 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 31 U.S.C. 9701; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3110—Noncompetitive Leases

17. Amend § 3110.4(a) by revising the fourth and sixth sentences to read as follows:

§ 3110.4 Requirements for offer.

(a) * * * The original copy of each offer must be typed or printed plainly in ink, signed in ink and dated by the offeror or an authorized agent, and must include the payment of the first year's rental and the processing fee found in the fee schedule in 43 CFR 3000.12. * * * A noncompetitive offer to lease a future interest applied for under 43 CFR 3110.9 must include the processing fee payment found in the fee schedule in 43 CFR 3000.12. * * *

* * * * *

PART 3120—COMPETITIVE LEASES

18. The authority citation for part 3120 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 40 U.S.C. 471 *et seq.*; 43 U.S.C. 1701 *et seq.*; and the Attorney General's Opinion of April 2, 1941 (40 Op. Atty. Gen. 41).

19. Amend § 3120.5–2 by revising paragraph (b)(3) to read as follows:

§ 3120.5–2 Payments required.

* * * * *

(b) * * *

(3) The processing fee found in the fee schedule in 43 CFR 3000.12 for each parcel.

* * * * *

PART 3130—OIL AND GAS LEASING; NATIONAL PETROLEUM RESERVE, ALASKA

20. The authority citation for part 3130 is revised to read as follows:

Authority: 42 U.S.C. 6508 and 43 U.S.C. 1701 *et seq.*

21. Amend § 3132.3(a) by revising the first sentence and adding a new sentence after the first sentence to read as follows:

§ 3132.3 Payments.

(a) Make payments of bonuses including deferred bonuses, first year's rental, other payments due upon lease issuance, and fees to BLM's Alaska State Office. Before we issue a lease, the highest bidder must pay the processing fee for competitive lease application found in the fee schedule in 43 CFR 3000.12 in addition to other remaining bonus and rental payments. * * *

* * * * *

Subpart 3135—Transfers, Extensions, Consolidations, and Suspensions

22. Amend § 3135.1–2(a)(2) by revising the first two sentences to read as follows:

§ 3135.1–2 Requirements for filing of transfers.

* * * * *

(a) * * *

(2) An application for approval of any instrument that the regulations require you to file must include the processing fee payment found in the fee schedule in 43 CFR 3000.12. Any document that the regulations in this part do not require you to file, but which you submit for record purposes, must also include the processing fee payment for assignment and transfer found in the fee schedule in 43 CFR 3000.12 for each lease affected. * * *

* * * * *

23. Amend § 3135.1–6(a) by adding a sentence at the end as follows:

§ 3135.1–6 Consolidation of leases.

(a) * * * Include with each request for a consolidation of leases the processing fee found in the fee schedule in 43 CFR 3000.12.

* * * * *

PART 3150—ONSHORE OIL AND GAS GEOPHYSICAL EXPLORATION

24. The authority citation for part 3150 is revised to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.* and 351–359; 31 U.S.C. 9701; 42 U.S.C. 6504 and 6508; and 43 U.S.C. 1701 *et seq.*

Subpart 3151—Exploration Outside of Alaska

25. Amend § 3151.1 by revising the second sentence to read as follows:

§ 3151.1 Notice of intent to conduct oil and gas geophysical exploration operations.

* * * File the notice of intent with the Field Office Manager of the proper BLM office on the form approved by the Director along with the processing fee payment found in the fee schedule in 43 CFR 3000.12. On October 1 of each year,

this processing fee will be raised by not more than \$500 until it has reached \$2,500 (as adjusted for the change in the IPD–GDP). * * *

Subpart 3152—Exploration in Alaska

26. Amend § 3152.1 by removing the undesignated sentence at the end of the section; redesignating paragraphs (a) through (f) as (1) through (6); redesignating introductory text as paragraph (a) introductory text; and adding new paragraph (b) to read as follows:

§ 3152.1 Application for oil and gas geophysical exploration permit.

* * * * *

(b) The applicant must submit an application, along with the processing fee found in the fee schedule in 43 CFR 3000.12, to the Field Office Manager of the proper BLM office. On October 1 of each year, this processing fee will be raised by not more than \$500 until it has reached \$2,500 (as adjusted for the change in the IPD–GDP).

PART 3160—ONSHORE OIL AND GAS OPERATIONS

27. The authority citation for part 3160 is revised to read as follows:

Authority: 25 U.S.C. 369d and 2107; 30 U.S.C. 181, 189 *et seq.*, 306, 359, 1751; 31 U.S.C. 9701, and 43 U.S.C. 1701 *et seq.*

Subpart 3162—Requirements for Operating Rights Owners and Operators

28. Amend § 3162.3–1 by adding a new sentence at the end of paragraph (c) to read as follows:

§ 3162.3–1 Drilling applications and plans.

* * * * *

(c) * * * You must include a processing fee found in the fee schedule 43 CFR 3000.12 with your application for a permit to drill. On October 1 of each year, this processing fee will be raised by not more than \$500 until it has reached \$4,000 (as adjusted for the change in the IPD–GDP).

Group 3200—Geothermal Resources Leasing

PART 3200—GEOTHERMAL RESOURCE LEASING

29. The authority citation for part 3200 is revised to read as follows:

Authority: 30 U.S.C. 1001–1028; and 43 U.S.C. 1701 *et seq.*

Subpart 3204—Noncompetitive Leasing

30. Amend § 3204.12 by revising the first sentence to read as follows:

§ 3204.12 What fees must I pay with my lease offer?

Submit the processing fee found in the fee schedule in 43 CFR 3000.12 for each lease offer, and an advance rent in the amount of \$1 per acre (or fraction of an acre). * * *

Subpart 3205—Competitive Leasing

31. Amend § 3205.16(a) by removing the word “and” at the end of paragraph (a)(3), redesignating paragraph (a)(4) as paragraph (a)(5), and adding a new paragraph (a) (4) to read as follows:

§ 3205.16 How will I know whether my bid is accepted?

(a) * * *

(3) The first year’s advance rent;

(4) The processing fee found in the fee schedule in 43 CFR 3000.12 for competitive lease application; and
* * * * *

Subpart 3210—Additional Lease Information

32. Amend § 3210.12 by adding a new sentence at the end of the section to read as follows:

§ 3210.12 May I consolidate leases?

* * * You must include the payment found in the fee schedule in 43 CFR 3000.12 with your request to consolidate leases.

Subpart 3211—Fees, Rent, and Royalties

33. Amend § 3211.10 by:

FEES, RENT, AND ROYALTIES

Type	Competitive leases	Noncompetitive leases
(1) Lease Application Processing fee	As found in the fee schedule in 43 CFR 3000.12.	As found in the fee schedule in 43 CFR 3000.12 (includes future interest leases).
* * *	* * *	* * *
(3) Transfer of Record Title or Operating Rights.	As found in the fee schedule in 43 CFR 3000.12.	As found in the fee schedule in 43 CFR 3000.12.
(4) Transfer of Interest to Heir or Devisee, Name Change, or Notification of Corporate Merger.	As found in the fee schedule in 43 CFR 3000.12.	As found in the fee schedule in 43 CFR 3000.12.

* * * * *

Subpart 3213—Relinquishment, Termination, Cancellation, and Expiration.

34. Revise § 3213.19 to read as follows:

§ 3213.19 What must I do to have my lease reinstated?

Send BLM a petition requesting reinstatement. Your petition must include the serial number for each lease

and an explanation of why the delay in payment was justifiable. Lack of diligence on your part is not a justification for delaying payment. In addition to your petition, you must also include any past rent owed, any rent that has accrued from the termination date, and the processing fee found in the fee schedule in 43 CFR 3000.12.

Subpart 3216—Transfers

35. Revise § 3216.14 to read as follows:

A. Revising the section heading;
B. Revising paragraph (b) introductory text;

C. Revising paragraph (b) table heading and entries (1) and (3);

D. Redesignating paragraph (b) table entries (4) through (9) as (5) through (10); and

E. Adding a new paragraph (b) table entry (4).

The revisions and addition read as follows:

§ 3211.10 What are the fees, rent, and minimum royalties for leases?

* * * * *

(b) Use the following table to determine the fees, rents, and minimum royalties owed for your lease:

§ 3216.14 What fees and forms does a transfer require?

With each transfer request send us the correct form, if required, and pay the transfer processing fee found in the fee schedule in 43 CFR 3000.12. When you calculate your fee, make sure it covers the full amount. For example, if you are transferring record title for three leases, submit three times the listed fee with the application. Use the following chart to determine forms and fees:

Type of form	Specific form required	Form No.	Number of copies	Transfer fee (per lease)
(a) Record title	Yes	3000–3	2 executed copies	As found in the fee schedule in 43 CFR 3000.12.
(b) Operating rights	Yes	3000–3(a)	2 executed copies	As found in the fee schedule in 43 CFR 3000.12.
(c) Estate transfers	No	N/A	1 List of Leases	As found in the fee schedule in 43 CFR 3000.12.
(d) Corporate mergers	No	N/A	1 List of Leases	As found in the fee schedule in 43 CFR 3000.12.
(e) Name changes	No	N/A	1 List of Leases	As found in the fee schedule in 43 CFR 3000.12.

Subpart 3251—Exploration Operations: Getting a Permit

36. Amend § 3251.12 by redesignating paragraphs (b) through (h) as paragraphs

(c) through (i), and adding a new paragraph (b) to read as follows:

§ 3251.12 What does BLM need to approve my exploration permit?

* * * * *

(b) Include the processing fee found in the fee schedule in 43 CFR 3000.12.

On October 1 of each year, this processing fee will be raised by not more than \$500 until it has reached \$2,500 (as adjusted for the change in the IPD-GDP).

* * * * *

Subpart 3261—Drilling Operations: Getting a Permit

37. Amend § 3261.10(a) by adding two new sentences between the first and second sentences to read as follows:

§ 3261.10 How do I get approval to begin well pad construction?

(a) * * * You must submit the processing fee found in the fee schedule in 43 CFR 3000.12 with your sundry notice. On October 1 of each year, this processing fee will be raised by not more than \$500 until it has reached \$3,500 (as adjusted for the change in the IPD-GDP). * * *

* * * * *

Group 3400—Coal Management

PART 3470—COAL MANAGEMENT PROVISIONS AND LIMITATIONS

38. The authority citation for part 3470 is revised to read as follows:

Authority: 30 U.S.C. 189 and 359; and 43 U.S.C. 1701 *et seq.*

Subpart 3473—Fees, Rentals, and Royalties

39a. Revise § 3473.2 to read as follows:

§ 3473.2 Fees.

(a) An application for a license to mine must include payment of the filing

fee found in the fee schedule in 43 CFR 3000.12. BLM may waive the filing fee for applications filed by relief agencies as provided in § 3440.1-1(b) of this chapter.

(b) An application for an exploration license must include payment of the filing fee found in the fee schedule in 43 CFR 3000.12.

(c) An instrument of transfer of a lease or an interest in a lease must include payment of the filing fee found in the fee schedule in 43 CFR 3000.12.

(d) BLM will charge applicants for a royalty rate reduction a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

(e) BLM will charge applicants for logical mining unit formation or modification a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

(f) BLM will charge the successful applicant for a competitive coal lease a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

(g) BLM will charge applicants for modification of a coal lease a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

§§ 3473.2-1 and 3473.2-2 [Removed]

39b. Remove §§ 3473.2-1 and 3473.2-2.

PART 3500—LEASING OF SOLID MINERALS OTHER THAN COAL AND OIL SHALE

40. The authority citation for part 3500 is revised to read as follows:

Authority: 5 U.S.C. 552; 30 U.S.C. 189 and 192c; 43 U.S.C. 1733, 1734 and 1740; and

sec. 402, Reorganization Plan No. 3 of 1946 (5 U.S.C. appendix).

Subpart 3501—Leasing of Solid Minerals Other Than Coal and Oil Shale: General

41. Amend § 3501.1(e) by adding a new first sentence to read as follows:

§ 3501.1 What is the authority for this part?

* * * * *

(e) *Fees.* Section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1734) authorizes the Secretary to establish reasonable filing and service fees for applications and other documents relating to the public lands. * * * * *

Subpart 3504—Fees, Rental, Royalty and Bonds

42. A new § 3504.10 is added to read as follows:

§ 3504.10 What fees must I pay?

(a) *Filing fees.* Include the filing fee for “applications other than those listed below” found in the fee schedule in 43 CFR 3000.12 with each application you submit to BLM that is not charged a processing fee as described in paragraph (b) of this section (for example, transfers, assignments, and subleases). Fees for exploration licenses are not administered under this section, but are administered under part 2920 of this chapter.

(b) *Processing fees.* The following table shows processing fees for various documents.

Document	Processing fee
(1) Prospecting permit application	Case-by-case basis as described in 43 CFR 3000.11.
(2) Prospecting permit application amendment	As found in the fee schedule in 43 CFR 3000.12.
(3) Prospecting permit extension	As found in the fee schedule in 43 CFR 3000.12.
(4) Preference right lease application	Case-by-case basis as described in 43 CFR 3000.11.
(5) Successful competitive lease application	Case-by-case basis as described in 43 CFR 3000.11.
(6) Lease renewal application	As found in the fee schedule in 43 CFR 3000.12.
(7) Application to waive, suspend, or reduce your rental, minimum royalty, or royalty rate.	Case-by-case basis as described in 43 CFR 3000.11.
(8) Future or fractional interest lease application	Case-by-case basis as described in 43 CFR 3000.11.

43. Revise § 3504.12(a) to read as follows:

§ 3504.12 What payments do I send to BLM and what payments do I send to MMS?

(a) *Fees and rentals.* (1) Pay all filing and processing fees, all first-year rentals, and all bonus bids for leases to the BLM State office that manages the lands you are interested in. Make your instruments payable to the Department of the Interior—Bureau of Land Management.

(2) Pay all second-year and subsequent rentals and all other payments for leases to the Minerals Management Service (MMS). See 30 CFR part 218 for MMS's payment procedures.

* * * * *

Subpart 3505—Prospecting Permits

44. Revise § 3505.12 to read as follows:

§ 3505.12 How do I obtain a prospecting permit?

Deliver three copies of the BLM application form to the BLM office with jurisdiction over the lands you are interested in. Include the first year's rental with your application. You will also be charged a processing fee, which BLM will determine on a case-by-case basis as described in 43 CFR 3000.11. For more information on fees and rentals, see subpart 3504 of this part.

45. Amend § 3505.30 by removing the last sentence and by revising the second full sentence to read as follows:

§ 3505.30 May I amend or change my application after I file it?

* * * You must include the rental for any added lands and the processing fee found in the fee schedule in 43 CFR 3000.12 with your amended application.

46. Amend § 3505.31 by revising the last sentence to read as follows:

§ 3505.31 May I withdraw my application after I file it?

* * * BLM will retain any fees already paid for processing the application.

47. Amend § 3505.50 by redesignating paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3), respectively, redesignating the introductory text as paragraph (a), and adding paragraph (b) to read as follows:

§ 3505.50 How will I know if BLM has approved or rejected my application?

* * * * *

(b) If we do not accept your application, we will refund your rental payment. We will retain any fees already paid for processing the application.

§ 3505.51 [Removed]

48. Section 3505.51 is removed.

49. Amend § 3505.64 by revising the last sentence to read as follows:

§ 3505.64 How do I apply for an extension?

* * * Include the processing fee found in the fee schedule in 43 CFR 3000.12 and the first year's rental, in accordance with §§ 3504.10, 3504.15, and 3504.16 of this part.

Subpart 3507—Preference Right Lease Applications

50. Revise § 3507.16 to read as follows:

§ 3507.16 Is there a fee or payment required with my application?

Yes. You must submit the first year's rental with your application according to the provisions in § 3504.15 of this part. BLM will also charge a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

Subpart 3508—Competitive Lease Applications

51. Amend § 3508.21 by adding a new paragraph (c) to read as follows:

§ 3508.21 What happens if I am the successful bidder?

* * * * *

(c) BLM will charge you a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

Subpart 3509—Fractional and Future Interest Lease Applications

52. Amend § 3509.16 by removing the second sentence and adding a new last sentence to read as follows:

§ 3509.16 How do I apply for a future interest lease?

* * * BLM will charge you a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

53. Amend § 3509.30 by revising the last sentence to read as follows:

§ 3509.30 May I withdraw my application for a future interest lease?

* * * BLM will retain any fees already paid for processing the application.

54. Amend § 3509.46 by removing the second sentence and adding a new last sentence to read as follows:

§ 3509.46 How do I apply for a fractional interest prospecting permit or lease?

* * * BLM will charge you a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

55. Amend § 3509.51 by revising the last sentence to read as follows:

§ 3509.51 May I withdraw my application for a fractional interest prospecting permit or lease?

* * * BLM will retain any fees already paid for processing the application.

Subpart 3511—Lease Terms and Conditions

56. Amend § 3511.27 by revising the last sentence to read as follows:

§ 3511.27 How do I renew my lease?

* * * Send us three copies of your application together with the processing fee found in the fee schedule in 43 CFR 3000.12, and an advance rental payment of \$1 per acre or fraction of an acre.

Subpart 3513—Waiver, Suspension or Reduction of Rental and Minimum Royalties

57. Add § 3513.16 to read as follows:

§ 3513.16 Do I have to pay a fee when I apply for a waiver, suspension, or reduction of rental, minimum royalty, production royalty, or minimum production?

Yes. BLM will charge you a processing fee on a case-by-case basis, as described in 43 CFR 3000.11.

Group 3600—Mineral Materials Disposal

PART 3600—MINERAL MATERIALS DISPOSAL

58. The authority citation for part 3600 is revised to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1201, 1732, 1733, 1734, 1740; Sec. 2, Act of September 28, 1962 (Pub. L. 87-713, 76 Stat. 652).

59. Amend § 3602.11 by adding paragraph (c) to read as follows:

§ 3602.11 How do I request a sale of mineral materials?

* * * * *

(c) You must pay a processing fee provided in 43 CFR 3602.31(a) and 3602.44(f). If the request is for mineral materials that are from a community pit or common use area, this requirement does not apply.

60. Amend § 3602.31 by revising the section heading and adding at the beginning of paragraph (a) introductory text a new sentence to read as follows:

§ 3602.31 What volume limitations and fees generally apply to noncompetitive mineral materials sales?

(a) BLM will charge the purchaser a processing fee on a case-by-case basis as described in 43 CFR 3000.11. * * *

* * * * *

61. Amend § 3602.44 by adding paragraph (f) to read as follows:

§ 3602.44 How do I make a bid deposit?

* * * * *

(f) BLM will charge the successful bidder a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

62. Amend § 3602.47 by revising the section heading and adding a new paragraph (e) to read as follows:

§ 3602.47 When and how may I renew my competitive contract and what is the fee?

* * * * *

(e) *Fee.* BLM will charge a processing fee on a case-by-case basis as described in 43 CFR 3000.11.

Group 3800—Mining Claims Under the General Mining Laws

PART 3800—MINING CLAIMS UNDER THE GENERAL MINING LAWS

63. The authority citation for part 3800 is revised to read as follows:

Authority: 16 U.S.C. 351 and 460y-4; 30 U.S.C. 22 and 28k; 31 U.S.C. 9701; and 43 U.S.C. 1201 and 1740.

64-65. Add a new Subpart 3800, consisting of § 3800.5, to read as follows:

Subpart 3800—General**§ 3800.5 Fees.**

(a) An applicant for a plan of operations under this part must pay a processing fee on a case-by-case basis as described in 43 CFR 3000.11 whenever BLM decides that consideration of the plan of operations requires the preparation of an Environmental Impact Statement.

(b) An applicant for a plan of operations or a mineral patent under this part, or a notice operator who may not conduct operations under this part until a validity examination is

performed, must pay a processing fee on a case-by-case basis as described in 43 CFR 3000.11 for any validity examination and report performed in connection with the application or notice.

(c) An applicant for a mineral patent also is required to pay a processing fee under § 3860.1.

PART 3830—LOCATING, RECORDING, AND MAINTAINING MINING CLAIMS OR SITES; GENERAL PROVISIONS

66. The authority citation for part 3830 is revised to read as follows:

Authority: 18 U.S.C. 1001, 3571; 30 U.S.C. 22 *et seq.*, 242, 611; 31 U.S.C. 9701; 43 U.S.C. 2, 1201, 1212, 1457, 1474, 1734, 1740, 1744; 44 U.S.C. 3501 *et seq.*, 115 Stat. 414.

67. Revise entries (a), (b), (c), (e), and (f) in the table at § 3830.21 to read as follows:

§ 3830.21 What are the different types of service charges and fees?

* * * * *

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833)	(1) A total sum which includes: (i) The processing fee for notice of location found in the fee schedule in 43 CFR 3000.12. (ii) A one-time \$30 location fee	No. No.
(b) Amending a mining claim or claim site location (§ 3833.20) ...	(iii) An initial \$125 maintenance fee The processing fee found in the fee schedule in 43 CFR 3000.12.	No. No.
(c) Transferring a mining claim or site (§ 3833.30)	The processing fee found in the fee schedule in 43 CFR 3000.12.	No.
* * * * *		
(e) Recording an annual FLPMA filing (§ 3835.30)	The processing fee found in the fee schedule in 43 CFR 3000.12.	No.
(f) Submitting a petition for deferment of assessment work (§ 3836.20).	The processing fee found in the fee schedule in 43 CFR 3000.12.	No.
* * * * *		

PART 3833—RECORDING MINING CLAIMS AND SITES

68a. The authority citation for part 3833 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*, 621–625; 43 U.S.C. 2, 1201, 1457, 1740, 1744; 62 Stat. 162; 115 Stat. 414.

68b. Revise § 3833.11(c) to read as follows:

§ 3833.11 How do I record mining claims and sites?

* * * * *

(c) When you record a notice or certificate of location, you must pay a processing fee, location fee, and initial maintenance fee as provided in § 3830.21 of this chapter.

* * * * *

69. Revise § 3833.22(b) to read as follows:

§ 3833.22 How do I amend my location?

* * * * *

(b) You must pay a processing fee for each claim or site you amend. See the table of fees and service charges in § 3830.21 of this chapter.

* * * * *

70. Revise § 3833.32(c) to read as follows:

§ 3833.32 How do I transfer a mining claim or site?

* * * * *

(c) Each transferee must pay a processing fee per mining claim or site you were transferred. See the table of fees and service charges in § 3830.21 of this chapter.

* * * * *

PART 3835—WAIVERS FROM ANNUAL MAINTENANCE FEES

71a. The authority citation for part 3835 is revised to read as follows:

Authority: 30 U.S.C. 22, 28, 28f–28k; 43 U.S.C. 2, 1201, 1457, 1740, 1744; 50 U.S.C. App. 501, 565; 115 Stat. 414.

71b. Revise § 3835.33(e) to read as follows:

* * * * *

§ 3835.33 What should I include when I submit a notice of Intent to Hold?

* * * * *

(e) A processing fee for each mining claim or site affected. (See the table of fees and service charges in § 3830.21 of this chapter.)

PART 3836—ANNUAL ASSESSMENT WORK REQUIREMENTS FOR MINING CLAIMS

71a. The authority citation for part 3836 is revised to read as follows:

Authority: 30 U.S.C. 22, 28, 28b–28e; 43 U.S.C. 2, 1201, 1457; 50 U.S.C. App. 501, 565.

72b. Revise § 3836.23(g) to read as follows:

§ 3836.23 How do I petition for deferment of assessment work?

* * * * *

(g) You must pay a processing fee with each petition. (See the table of fees and service charges in § 3830.21 of this chapter.)

PART 3860—MINERAL PATENT APPLICATIONS

73. The authority citation for part 3860 is revised to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1701 *et seq.*

74–75. Amend part 3860 by adding new subpart 3860, consisting of § 3860.1, to read as follows:

Subpart 3860—General

§ 3860.1 Fees.

(a) Each mineral patent application must include the processing fee found in the fee schedule in 43 CFR 3000.12 to cover BLM’s adjudication costs for the application.

(b) As provided at § 3800.5, BLM will charge a separate processing fee on a case-by-case basis as described in § 3000.11 to cover its costs for conducting the validity examination and report.

Subpart 3862—Lode Mining Claim Patent Applications

76. Revise § 3862.1–2 to read as follows:

§ 3862.1–2 Fees.

An applicant for a lode mining claim patent must pay fees as described in § 3860.1 of this part.

Subpart 3863—Placer Mining Claim Patent Applications

77. Amend § 3863.1 by adding new paragraph (c) to read as follows:

§ 3863.1 Placer mining claim patent applications: General.

* * * * *

(c) An applicant for a placer mining claim patent must pay fees as described in § 3860.1 of this part.

Subpart 3864—Millsite Patents

78. Add § 3864.1–5 to read as follows:

§ 3864.1–5 Fees.

An applicant for a millsite patent must pay fees as described in § 3860.1 of this part.

PART 3870—ADVERSE CLAIMS, PROTESTS, AND CONFLICTS

79. The authority citation for part 3870 is revised to read as follows:

Authority: 30 U.S.C. 30; 43 U.S.C. 1201, 1457, 1701 *et seq.*

Subpart 3871—Adverse Claims

80. Amend § 3871.1 by revising paragraph (d) as follows:

§ 3871.1 Filing of claim.

* * * * *

(d) Each adverse claim filed must include the processing fee found in the fee schedule in 43 CFR 3000.12.

Subpart 3872—Protests, Contests, and Conflicts

81. Amend § 3872.1 by revising paragraph (b) to read as follows:

§ 3872.1 Protest against mineral applications.

* * * * *

(b) A protest by any party, except a Federal agency, must include the processing fee found in the fee schedule in 43 CFR 3000.12.



Federal Register

**Tuesday,
July 19, 2005**

Part IV

Department of the Interior

Minerals Management Service

30 CFR Part 250

**Oil and Gas and Sulphur Operations in
the Outer Continental Shelf (OCS)—Fixed
and Floating Platforms and Structures
and Documents Incorporated by
Reference; Final Rule**

DEPARTMENT OF THE INTERIOR**Minerals Management Service****30 CFR Part 250**

RIN 1010-AC85

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Fixed and Floating Platforms and Structures and Documents Incorporated by Reference**AGENCY:** Minerals Management Service (MMS), Interior.**ACTION:** Final rule.

SUMMARY: This rule amends our regulations concerning platforms and structures to include coverage of floating offshore oil and gas production platforms. The rule also incorporates into MMS regulations a body of industry standards pertaining to floating production systems (FPSs). Limited changes are also made to regulations concerning oil and gas production safety systems; and pipelines and pipeline rights-of-way. These changes are needed because of the rapid increase in deepwater exploration and development, and industry's increasing reliance on floating facilities for those activities. Incorporating the industry standards into MMS regulations will save the public the costs of developing separate, and possibly duplicative, government standards, and will streamline our procedures for reviewing and approving new offshore floating platforms.

DATES: This rule becomes effective on August 18, 2005. The incorporation by reference of the publications listed in the regulation is approved by the Director of the Federal Register as of August 18, 2005.

FOR FURTHER INFORMATION CONTACT: Tommy Laurendine, Chief, Office of Structural and Technical Support (OSTS) at (504) 736-5709 or FAX (504) 736-1747.

SUPPLEMENTARY INFORMATION:**Background**

In response to the rapid increase in deepwater oil and gas exploration and development, on December 27, 2001, MMS published a proposed rule (66 FR 66851-66865) to amend subpart I of 30 CFR part 250—Platforms and Structures. The proposed rule was designed to streamline the permitting process for floating platforms, and to incorporate by reference into MMS regulations industry standards addressing various aspects of FPSs.

The remarkable increase in oil and gas exploration, development, and

production in deepwater is due to the development of new technologies that (1) enable drilling and production in deeper waters; and (2) reduce operational costs and risks. In 1993, deepwater areas of the OCS (water depths greater than 1,000 feet, or 305 meters) accounted for approximately 12 percent of the oil and 2 percent of the gas of total offshore production. Discovery and development of deepwater fields began accelerating in 1994. By the end of 2004, deepwater areas accounted for about 62 percent of the oil and 32 percent of the gas of total offshore production.

The productivity of the new deepwater wells is enormous compared to past wells in more shallow waters. Historically, offshore wells generally have produced between 200 and 300 barrels (bbls) of oil per day. However, some deepwater wells have produced at rates over 30,000 bbls per day. Success in deepwater is evident in both the high production rates and sustained drilling for new discoveries announced each year. Exploratory drilling has moved into water depths of over 10,000 feet (3,048 meters).

By 2003, 27 permanent development platforms had been approved for installation in waters over 1,000 feet deep (305 meters). Of these, 16 structures are floating platforms and 11 are fixed. All of these production platforms were approved on a case-by-case basis under existing regulations. However, it will streamline the permitting process for MMS to have a designated body of standards to specifically deal with the whole new class of floating production platforms. The offshore oil and gas industry has already developed its own body of standards because of the recognized need to streamline the design process for floating platform facilities and their subsystems. In addition to describing the primary platform facilities, the industry standards also govern production and pipeline risers, station-keeping and mooring systems, flexible pipelines, and hazards analysis.

Use of Industry Standards

Under existing regulations, lessees and operators must use standards that are acceptable to MMS or they will not receive a permit to proceed with their development plans. If they do not choose to use standards already incorporated in the regulations, they have the option to use equivalent standards, provided they first obtain our approval.

The 1996 National Technology Transfer and Advancement Act (NTTAA) (Pub. L. 104-113) directs

Federal agencies to achieve greater reliance on voluntary standards and standards-developing organizations by participating in developing voluntary standards without dominating the process. The NTTAA encourages "the use by Federal agencies of private sector standards, emphasizing where possible the use of standards developed by private, consensus organizations" to eliminate "unnecessary duplication and complexity" in developing standards and regulations. Office of Management and Budget (OMB) Circular A-119 specifies the requirements for Federal agencies to implement the NTTAA. According to Circular A-119, agencies must use domestic and international voluntary consensus standards in their regulatory and procurement activities instead of government standards, unless they determine that the use of consensus standards would be inconsistent with applicable law or otherwise impractical.

The Purpose of This Rule

The purpose of this rule is to incorporate into MMS regulations a body of industry standards that will enable MMS to more efficiently examine plans and issue permits for floating offshore platforms. Until this rulemaking, MMS regulations have not specifically addressed these facilities separately from fixed platforms. Therefore, this rule includes a complete rewrite of subpart I of 30 CFR part 250 to address floating platforms. This rule also modifies select sections of subpart J concerning the incorporation of American Petroleum Institute (API) Spec 17J and its use when installing pipelines constructed of unbonded flexible pipe. Select sections of subpart H are modified to reference API Recommended Practice (RP) 14J as well as API Spec 17J. Incorporating the voluntary industry standards will save the public the cost of developing government-specific standards.

This rule will enhance the efficient exploration and development of the most promising new sources of United States oil and gas supplies in the deepwater areas of the OCS in two ways. First, it will provide more certainty to the lessees' design engineers so that they will know in advance what design criteria are acceptable to MMS. Second, it will enhance MMS engineers' abilities to review each new project to ensure structural integrity, operational and human safety, and environmental protection. The rule will establish a single body of standards on which each new project can be based, and result in streamlining the regulatory review process.

Incorporating the industry standards into MMS regulations will dictate that respondents comply with the requirements in the incorporated documents. This includes certified verification agent (CVA) reviews and hazards analyses. This will increase the number of CVA nominations and reports associated with the facilities, and require hazards analysis documentation for new floating platforms. (In some of the industry standards, the CVA is referred to as an independent verification agent (IVA)). Industry sources estimate that it will cost an average of \$1.2 million to apply hazards analysis to each new floating production facility. Requiring the industry hazards analysis standard for all new deepwater floating production platforms will be the most costly element of this rule.

With this final rule, MMS will incorporate seven API standards, and one American Welding Society (AWS) standard. MMS has actively participated in developing several of these standards, and believes that it would be difficult for the agency to write government regulations that would be either as technically detailed or as broad in scope as the standards. Incorporating these standards will help reduce the size and complexity of subpart I. Moreover, writing government regulations embodying these standards would be time-consuming and not economically efficient. Nor could it be done with the same level of expertise that was involved in the industry effort. MMS believes that it is entirely within the letter and spirit of the NTTAA that these voluntary industry standards be incorporated into our regulations. It is in the public interest that MMS adopt these standards.

The eight industry standards to be incorporated are as follows:

(1) *API RP 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs), First Edition, June 1998, API Order No. G02RD1*. This standard covers drilling, production, and pipeline risers associated with all FPSs, including spars, TLPs, column stabilized units (CSUs), and floating production, storage, and offloading units (FPSOs). Moreover, it deals with construction of flexible riser systems, which are not explicitly covered under current regulations.

(2) *API RP 2SK, Recommended Practice for Design and Analysis of Stationkeeping Systems for Floating Structures, Second Edition, December 1996, Effective Date: March 1, 1997, API Order No. G02SK2*. This standard addresses station-keeping systems for floating platforms. These systems are

not explicitly covered under current regulations.

(3) *API RP 2T, Recommended Practice for Planning, Designing, and Constructing Tension Leg Platforms, Second Edition, August 1997, API Order No. G02T02*. Over the past 13 years, every application for a TLP installation in the OCS has relied on API RP 2T as the basis for its design. MMS has approved each of these applications on a case-by-case basis. There are now eight such installations in deepwater areas. For all practical purposes, API RP 2T is the de facto industry guideline on the design and construction of TLPs. In some areas, API RP 2T relies heavily on the analysis contained in API RP 2A, which is already incorporated into MMS regulations, particularly for environmental loading and foundation and anchoring factors. Considered by itself, API RP 2T imposes no new reporting requirements or third-party review requirements.

(4) *API RP 2FPS, Recommended Practice for Planning, Designing, and Constructing Floating Production Systems, First Edition, March 2001, API Order No. G2FPS1*. API RP 2FPS serves as an "umbrella document" for all FPSs, except for TLPs (covered by API RP 2T). It incorporates as second-tier standards the requirements of API RP 2RD, API RP 2SK, API RP 14J, API Spec 17J, and those of other standards. Considered by itself, API RP 2FPS imposes no new reporting requirements or third-party review requirements.

(5) *API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, First Edition, September 1, 1993, API Order No. 811-07200*. Implementing this standard for all new deepwater floating production platforms will be the most costly element of this rule for industry. During 2000, a consensus was reached within the industry that the complexities and safety issues involved in FPSs warrant the application of this standard to all new FPSs, variously described as CSUs, TLPs, spars, and FPSOs, etc. Deepwater FPSs are the most complex systems on the OCS, and can include numerous production wells that flow at over 20,000 bbls per day. Therefore, MMS has concluded that new floating production facilities should be assigned the highest priority for conducting hazards analysis. This analysis should follow one or more of the methods described in API RP 14J. Further, MMS believes it is most efficient to address potential safety and environmental hazards during the facility design phase. (Hazards analysis is much less useful and less cost-effective when applied to

facilities that are already installed.) MMS will require an analysis of operational hazards to be included as an integral part of all Deepwater Operations Plans. Industry sources estimate that it will cost an average of \$1.2 million to apply API RP 14J hazards analysis in the design of each new floating production facility.

(6) *API Specification (Spec) 17J, Specification for Unbonded Flexible Pipe, Second Edition, November 1999, Effective Date: July 1, 2000, API Order No. G17J02*. For several years MMS has been permitting remote subsea wells that use flexible pipe for deep sea production pipelines. API Spec 17J serves the interests of environmental protection and safety by providing guidance to both regulators and industry on the proper design and construction of flexible pipelines and flowlines. The industry projects that up to 50 percent of future deepwater wells will be remote subsea wells tied back to existing production platforms. There will also be an increasing number of shallow water subsea tie-backs. Therefore, this standard will be essential for future production operations.

(7) *American Welding Society, AWS D3.6M:1999, Specification for Underwater Welding (AWS D3.6M)*. MMS refers to this document every time we receive an application for an underwater welding repair. This document is analogous and complementary to the AWS Standard D1.1 (Structural Welding Code-Steel), which is used for above-water welding. Both AWS D1.1 and AWS D1.4 (Structural Welding Code-Reinforcing Steel) have been incorporated into current MMS regulations for over 20 years. Further, MMS was a member of the subcommittee which developed AWS D3.6M. Underwater welding is used infrequently because of the expense involved in making such repairs. However, it has been used with great success over the years to solve several complex underwater repair problems, some in very deep water. MMS presently receives applications for underwater welding repairs on an infrequent basis, and AWS D3.6M is the primary document the industry follows for these purposes. This standard needs to be incorporated into our regulations because MMS anticipates a growing future need for underwater welding repairs. Considered by itself, AWS D3.6M imposes no new reporting requirements or third-party review requirements.

(8) *API RP 2SM, Recommended Practice for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore*

Mooring, First Edition, March 2001, API Order No. G02SM1. This is a new API RP that addresses an important component of offshore mooring systems. To date, synthetic fiber ropes have seen only limited use in the mooring systems of floating OCS platforms. Given the lack of long-term experience with the use of synthetic fiber rope, API RP 2SM will serve as the primary reference document for use in approving applications which propose the use of such mooring systems. MMS was a member of the API subcommittee which developed API RP 2SM.

Regulatory Changes in Addition to Documents Incorporated by Reference

This final rule totally reorganizes subpart I. Much of this reorganization is a result of MMS' incorporation of the

21st edition of API RP 2A WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design; Twenty-First Edition, December 2000. This document was incorporated into MMS regulations, under separate rulemaking, on April 21, 2003. The incorporation allowed the elimination of much of the verbiage in the current subpart I regulations. Subpart I was further reorganized for clarity in this final rule.

In addition to incorporating new industry documents, the revised subpart I adds language specific to FPSs. This language complements the December 16, 1998, Memorandum of Understanding (MOU) between MMS and the U.S. Coast Guard (USCG) that was published in the **Federal Register**

on January 15, 1999 (64 FR 2660). The MOU describes our respective and overlapping responsibilities for regulating oil and gas activities on the OCS.

Discussion and Analysis of Comments

Since the MMS first proposed this rule in December 2001, the location and numbering of many of the proposed regulatory sections has changed. In some cases, the changes were made to provide a more logical progression of the approval process. In other instances, proposed regulatory sections were moved and renumbered in this final rule to accommodate industry commentors' suggestions and additions to the proposed rules. The following table shows the final rule section numbers and the original proposed sections:

Final section of 30 CFR	Proposed section of 30 CFR
§ 250.105	§ 250.105
§ 250.198	§ 250.198
§ 250.199	New content not in proposed rule.
Proposed wording deleted from final rule.	§ 250.204
§ 250.800	§ 250.800
§ 250.803	§ 250.803
§ 250.900	§ 250.900
§ 250.901	§ 250.901
§ 250.902	§ 250.917
§ 250.903	§ 250.914
§ 250.904	New content not in proposed rule.
§ 250.905	§ 250.902
§ 250.906	These requirements are not in the proposed rule. Requirements are from superseded regulations at § 250.909.
§ 250.907	§ 250.915
§ 250.908	§ 250.913
§ 250.909	New content not in proposed rule.
§ 250.910	§ 250.903
§ 250.911	§ 250.904
§ 250.912	§ 250.905 and § 250.907
§ 250.913	§ 250.906
§ 250.914	§ 250.908
§ 250.915	§ 250.909
§ 250.916	§ 250.910
§ 250.917	§ 250.911
§ 250.918	§ 250.912
§ 250.919	§ 250.916
§ 250.920	New content not in proposed rule.
§ 250.921	§ 250.913; new content not in proposed rule.
§ 250.1002	§ 250.1002
§ 250.1007	§ 250.1007

Eight organizations submitted nine comments on the proposed rulemaking. Respondents included the American Bureau of Shipping (ABS); the Offshore Operator's Committee (OOC); Shell Exploration & Production Company (Shell), which commented twice; the Independent Petroleum Association of America (IPAA); the National Ocean Industries Association (NOIA); ChevronTexaco; Newfield Exploration Company (Newfield); and ATP Oil & Gas Corporation (ATP). These respondents raised a number of complex

issues that are discussed immediately below.

Issue No. 1: Subpart I Should Be Broken Down To Separately Address Fixed and Floating Platforms

ChevronTexaco commented as follows:

There are significant differences between the two field development concepts covered by the proposed rewrite of Subpart I: The fixed production platform and the floating production platform. These differences include such things as number of

deployments of each concept (a handful of floating production platforms versus thousands of shallow and deepwater fixed platforms); design, fabrication, and installation complexity; availability of design firms and CVA firms; and cost. ChevronTexaco suggests that forcing one Subpart to cover both concepts is extremely confusing, lacks focus on the unique characteristics of the individual concepts, and creates a document that is difficult to read. ChevronTexaco recommends two distinctly separate sections of CFR 250, either within Subpart I, or preferably in a new Subpart covering floating production platforms. Ultimately, ChevronTexaco feels

this will provide for a clearer document by removing the ambiguities created by attempting to use wording originally written for fixed platform in rules for floating platforms.

More specifically, OOC commented concerning proposed § 250.902 (§ 250.905 in the final rule):

* * * The proposed regulations seems [sic] to assume that the design stages of a floating platform matches that for a fixed platform. For a fixed platform, in many cases the platform is fully designed and is then fabricated. For a floating platform, the design may be done in stages with fabrication commencing on various systems prior to the final design of other systems. This rule making does not seem to take this into account. We suggest that MMS investigate project sequencing and take that into account in the rulemaking.

NOIA, Shell, and Newfield all provided similar comments on this question.

The Platform Verification Program (PVP) described in this final rule at §§ 250.909–250.918 (§§ 250.903–250.912 in the proposed rule) covers all new floating production platforms and fixed platforms meeting one or more of five very specific criteria: (1) Platforms installed in water depths exceeding 400 feet (122 meters); (2) platforms having natural periods in excess of 3 seconds; (3) platforms installed in areas of unstable bottom conditions; (4) platforms having configurations and designs which have not previously been used or proven for use in the area; or (5) platforms installed in seismically active areas. The final rule language was changed to highlight the differences between the requirements for fixed and floating structures, but MMS concluded that separate subparts were not necessary.

MMS agrees that the third-party justification procedures for fixed versus floating platforms can differ significantly based on certification procedures (e.g., use of a CVA versus a classification society) and the regulatory agencies involved (e.g., primarily MMS for a fixed platform, versus both MMS and USCG for a floating platform). The regulatory language for certification under the PVP is written broadly so that it can cover both fixed and floating platforms.

The specific path to obtain approval for a particular platform will be based on the structural components and environmental conditions peculiar to that platform. It is quite conceivable that a floating platform will undergo more complicated design, CVA, and approval processes than a fixed platform. After evaluating the comments, MMS concluded that it is better to allow

engineering staffs to use their judgment in obtaining the various approvals than to try to write a “cookbook” regulation on the step-by-step certification or classification process for the design, fabrication, and installation of a hypothetical platform.

New innovations in offshore platforms are constantly emerging, and it would be impractical, if not impossible, to cover all the permutations in design or construction that could eventually evolve. The fact that most of the deepwater facilities MMS has permitted are floating facilities provides convincing evidence in favor of staying flexible in adapting our regulations to various types of facilities.

Some commentors believe it would be more confusing to separate subpart I into “fixed” and “floating” components, because of the many systems and technical problems which both types of platforms have in common. MMS agreed, and concluded that it was less satisfactory to have two subsections, because the greater specificity concerning either type of system could encourage more micro-managing in the final regulations. This could lead to less flexibility for innovative designs.

OOO commented concerning proposed § 250.901(a):

* * * In lieu of listing the standards for fixed and floating platforms together, it would be clearer if three lists were given: 1. Fixed only, 2. floating only and 3. fixed and floating. This would eliminate confusion on the applicability of standards such as 14] which only new floating platforms have to meet.

Shell and Newfield provided similar comments.

MMS agreed, and has added a chart to the final regulation to reduce confusion about the applicability of referenced industry standards.

Issue No. 2: The Subpart I Revisions Do Not Follow the MOU Between MMS and USCG

OOO, in commenting on proposed § 250.904(e), now final § 250.911(g), asserted that “The MOU gives the USCG sole jurisdiction over the structural design of ship-shaped hulls and superstructures.”

MMS disagrees, and believes that this assertion oversimplifies the MOU provisions assigning MMS’s and USCG’s respective and joint responsibilities for offshore floating platforms. The specific items listed in proposed § 250.903(b), and now in § 250.910(b) of this final rule, include the following structures normally associated with floating platforms: (1) Drilling and production risers, and riser tensioning systems; (2)

turrets and turret-and-hull interfaces; (3) foundations and anchoring systems; and (4) mooring or tethering systems. The following paragraphs address these items in their respective order with regard to the MOU between MMS and USCG.

Section III of the MOU contains a table listing the agencies’ respective and joint responsibilities associated with mobile offshore drilling units (MODUs) and fixed and floating OCS facilities. The table indicates in Item 2.c that, for all floating facilities, MMS is the lead agency for “risers (drilling, production, and pipeline)” and further notes that “Some pipeline risers may be subject to the Research and Special Programs Administration’s (RSPA) jurisdiction” (64 FR 2662).

Concerning “turrets and turret-and-hull interfaces,” Item 2.a of the MOU Section III table states as follows (64 FR 2661):

USCG responsibilities for fabrication, installation, and inspection of floating units are found in 33 CFR Subchapter N. MMS responsibilities are found in 30 CFR Subpart I. USCG and MMS will each review the design of the turret and turret/hull interface structure for ship-shaped floating facilities. All other aspects of the design and fabrication of all ship-shape floating facilities will receive only USCG review. All design, fabrication, and installation activities of all non-ship-shape floating facilities will be reviewed by both agencies.

Thus the MOU clearly shows that MMS and USCG both have responsibility for reviews of the turret and turret/hull interface structure of ship-shaped floating facilities.

Concerning “foundations and anchoring systems,” Item 4.a of the MOU Section III table indicates that MMS is the lead agency for foundations for both fixed and floating facilities (64 FR 2662). The MOU was written this way because MMS is the Federal agency with the geotechnical expertise essential for reviewing and evaluating foundation integrity for fixed and floating production platforms.

Closely related to “foundations and anchoring systems” are “mooring or tethering systems.” Item 4.b of the MOU Section III table indicates that “mooring and tethering systems” for floating production facilities are under the joint responsibility of both MMS and USCG. USCG is unquestionably the agency with the expertise and responsibility for determining the safety and integrity of the hull of a ship-shaped FPS. However, the anchoring and mooring system for a ship-shaped FPS is inherently different from the anchoring and mooring system for a ship. The FPS must remain moored on location for many months, if not

years, and in such a way that oil and gas production systems will not be adversely affected by excessive movement. For Item 4.b, the MOU states that "USCG is not responsible for site specific mooring analysis." The question of an effective and safe mooring system cannot be considered apart from the question of the sea bottom into which the mooring system is anchored. Again, MMS is the agency with the geotechnical expertise to determine whether the mooring system for a FPS is being anchored into stable sediments.

OOC, commenting on proposed § 250.901(a) stated:

* * * In the current MOU between MMS and USCG, the agencies have joint jurisdiction over the structural design on non-ship shaped hulls. USCG treats floating production platforms as MODUs. In 46 CFR 108.113, USCG requires each unit to meet the structural standards of the American Bureau of Shipping "Rules for Building and Classing Offshore Mobile Drilling Units". There is concern that there could be conflicts between the recommended practices and standards proposed for adoption in this rulemaking and the USCG structural requirements. Industry has not undertaken an exhaustive study to determine if conflicts exist. Further, it is confusing to industry to have joint jurisdiction over the same system, especially when the criteria is [sic] different. It is suggested that MMS and USCG work together and either adopt the same criteria for systems in which they have joint jurisdiction or that one agency clearly be given the lead jurisdiction for each system and move away from the joint jurisdiction where both agencies have to approve a system.

Shell, NOIA, and Newfield expressed similar concerns.

MMS believes that the respondents' concerns about coordination between MMS and USCG are overstated. MMS further believes that the procedures outlined in the new subpart I and the provisions of the MOU between MMS and USCG are sufficient to mitigate industry's concerns of duplicative and conflicting requirements between MMS and USCG. That said, conflicts cannot be entirely avoided. In the responsibilities section of the current MOU, three general classifications of facilities are identified (i.e., MODU, fixed facility, and floating facility). The lead agency for each system and sub-system is also identified.

Since USCG reviews the general marine requirements for floating facilities from a ship perspective, and MMS reviews oil and gas operations on this facility from a platform perspective, it is not always possible to adopt the same criteria. However, the MOU requires the identified lead agency to coordinate with the other agency, as

appropriate, and also requires that both agencies work together to develop necessary standards and to minimize duplicative and conflicting requirements whenever there are overlapping responsibilities. MMS does not believe that anything in this final rulemaking will prevent this coordination from continuing.

Issue No. 3: There Could Be Conflicts Between the MMS Platform Verification Program and the USCG Subchapter N Requirements for Floating Facilities

OOC commented as follows in its cover letter:

* * * In the current Memorandum of Understanding (MOU) between MMS and USCG, both agencies have joint jurisdiction and responsibility to review and approve the structural design of non ship shaped floating platforms. Prior to this rulemaking, MMS did not have regulations expressly covering floating platforms; therefore, floating platforms have been designed in accordance with USCG regulations which rely heavily on American Bureau of Shipping Rules for Building and Classing Mobile Offshore Drilling Units (ABS MODU rules). USCG has approved the use of other rules and guides as well as industry standards as appropriate to supplement the ABS MODU rules. Due to the high level of activity in deepwater and the limited staff available within companies, we have not undertaken an exhaustive comparative review of the proposed documents to be incorporated by reference with the ABS MODU rules. However, there is a high probability that conflicts may occur. In the event that conflicts do occur, how will the conflict be resolved between MMS and USCG regulations on the same system?

The joint jurisdiction of MMS and USCG over the same systems is confusing to industry, especially when conflicts occur. There are several approaches that we believe MMS and USCG could consider to eliminate the concern over joint jurisdiction. One would be to adopt identical regulations for systems subjected to joint jurisdiction. Or, MMS and USCG could work together to clearly identify lead agencies with the authority to approve each system in lieu of both agencies approving each system. Or, since the concept of verification agents is acceptable to both MMS and USCG, a verification agent that is acceptable to both agencies could review the project utilizing the best regulations and standards for the specific project or system, regardless if the regulations were identical between the two agencies.

Continuing coordination between MMS and USCG is required during the review and approval of OCS floating platforms. For the reasons stated under the preceding Issue No. 2, it is unrealistic to expect MMS and USCG to adopt identical standards because of the different natures of the types of facilities they regulate, and the separate responsibilities assigned to each agency by Congress. Both agencies have worked

diligently through various MOUs over the years to adapt their regulatory requirements to changing technology, circumstances, and statutory responsibilities.

USCG is currently revising the regulations at 33 CFR subchapter N. Since these are draft regulations, MMS believes it would be counterproductive at this time to do a complete and detailed comparison between our final subpart I regulations and the USCG proposed version of 33 CFR subchapter N. Prior to finalizing subchapter N, USCG and MMS have agreed to do a detailed comparison of the floating platform requirements of both agencies to identify and eliminate potential conflicts to the maximum extent practicable.

Concerning the matter of CVAs that are acceptable to both MMS and USCG, neither MMS nor USCG believes it should be in the business of certifying or recommending CVAs. Nevertheless, MMS would encourage lessees to submit qualification statements for CVAs that would be acceptable to both MMS and USCG.

Issue No. 4: It Is Unclear What Submissions MMS Expects To Receive

OOC commented concerning proposed § 250.903(b), § 250.910(b) in this final rule:

* * * Since the structures listed as (1)(2)(3) and (4) are not mentioned in (proposed) § 250.902, it is not clear what information MMS expects to be provided in the application process or in the CVA process. Please clarify.

For clarity in this final rule, language was added to the table in § 250.905(d), (f), and (h) concerning the items listed in proposed § 250.903(b). Briefly summarized, MMS expects to see all structures under our jurisdiction submitted through the normal platform approval process. The PVP is required for all platforms that do not meet standard design criteria for shallow waters. This will always be the case for a floating platform.

Issue No. 5: It Is Unclear What Is Expected of the CVA Process for Floating Platforms

Concerning proposed § 250.905(a), OOC commented:

* * * The design verification plan requirements are confusing. The proposed regulation appears to be based on CVA processes for fixed platforms. These are not applicable for floating platforms. MMS should write separate requirements for CVA processes for fixed and floating systems. For floating systems, the operator submits the design documentation specified in (1), (2) and (3) directly to the CVA, not to MMS to

give to the CVA. Is this a change in the program? Also, in most cases for a floating system, all the required information will not be given to the CVA at one time, but rather will be given to the CVA in a sequential manner as it is generated. It is recommended that MMS investigate the process used for the floating systems to date and modify the proposed rule accordingly.

OOC provided nearly identical comments on proposed § 250.905(b). Shell provided similar comments. Those proposed subsections were renumbered as §§ 250.912(a) and (b) in this final rule.

As explained above in Issue No. 1, concerning whether subpart I should be broken down to separately address fixed and floating platforms, MMS agrees that a floating platform probably will undergo more complicated design, CVA, and approval processes than a fixed platform. MMS concluded that it is better to allow the companies' engineering staffs to use their judgment in obtaining the various approvals rather than for MMS to impose a rigid step-by-step certification or classification process for the design, fabrication, and installation of each style and permutation of a platform.

MMS has not changed the program with respect to how PVP materials are submitted to the CVA. MMS has always required this information to be directly provided by the operator to both MMS and the CVA. The CVA's responsibilities during the design, fabrication, and installation phases are described in final §§ 250.916, 250.917, and 250.918, respectively. The CVA for each phase will not be able to perform these responsibilities in a proper manner without access to all the documentation submitted to MMS.

MMS agrees with OOC that in most cases, and for floating platforms in particular, required information will not be given to either the CVA or MMS at one time, but rather will be provided in a sequential manner as it is generated. This is to be expected, and is acceptable from our viewpoint. MMS is willing to review Platform Verification and CVA documentation as it becomes available, and there is no requirement in our regulations to submit it at one time. The only MMS requirements with respect to timing are the requirement in new § 250.912(a) that the lessee may not submit its design verification plan before submitting a Development and Production Plan (DPP) or a Development Operations Coordination Document (DOCD), and the requirement in new § 250.912(d) that operators combine fabrication verification plans and installation verification plans for man-made islands.

This final rule should make it easier to obtain approvals for floating offshore platforms. MMS has concluded that it is best to issue this final rule, rather than re-propose it with two separate CVA processes for fixed and floating platforms, as OOC suggests.

Concerning proposed § 250.910(d), located at § 250.916(c) in this final rule, OOC continued:

* * * It should also be recognized that for floating systems, the CVA has been verifying the design to the USCG requirements since MMS had not established design requirements. It will take the CVA longer to verify the design to the new requirements. In the cases where the CVA is also approving the design for Class and/or USCG, they will also have to verify the design to those requirements.

MMS agrees that it may take the CVA longer to verify the design to the new regulatory requirements. For those cases where the CVA is also approving the design for Class and USCG requirements, USCG will also have to verify the design requirements. This process is addressed in the current MOU between MMS and USCG.

OOC and Shell requested that naval architects be included in the list of personnel conducting the design verification described in proposed § 250.905(a). MMS agrees, and § 250.912(a) of our final rule has been amended accordingly.

Concerning proposed § 250.911(f), OOC and Shell requested, "Please clarify if the fabrication CVA is expected to verify the center of gravity, etc. that is normally considered to be part of the USCG review and approval."

MMS understands industry's concerns about coordination between MMS and USCG, particularly regarding floating platforms, and added language to final §§ 250.916(b) and 250.917(b) stating, "For floating platforms, the CVA must ensure that the requirements of the USCG for structural integrity and stability, *e.g.*, verification of center of gravity, etc., have been met."

Concerning proposed § 250.905(c), (§ 250.912(c) in this final rule), OOC commented, "We assume that the inspections discussed in (4) are the inspections performed immediately after installation to ensure that no damage was done during the installation activities."

OOC is correct. The final rule includes revised language in § 250.912(c)(4) to clarify this point. In some cases it may be desirable to conduct intermediate inspections during installation to ensure that the installation is continuing according to plan.

Issue No. 6: The Submission and Review Timeframes for Various Documents Are Unclear

OOC and Shell commented concerning the proposed § 250.904(b) requirement for three copies each of the design verification, fabrication verification, and installation verification plans, now contained in § 250.911(c) of this final rule, that the "MMS should establish a time frame for approval following the submittal of the required plans."

MMS does not agree. The industry respondents themselves have all expressed concerns about the complexity of the new subpart I approval processes, and uncertainty about their own ability to provide adequate documentation to obtain the necessary approvals from both MMS and USCG. The submission, review, and approval processes are all very complex. Therefore, MMS concluded that it would be unwise to try to put a scheduled approval process in place for any segment of the PVP. As discussed above under Issue No. 5, MMS agrees with OOC that in most cases, and for floating platforms in particular, required information will not be given to either the CVA or MMS at one time, but rather will be provided in a sequential manner as it is generated. The regulations do not require that all information under the PVP be submitted at one time.

As mentioned earlier in our discussion of Issue No. 2, some conflicts between MMS and USCG cannot be avoided, and this means that there can be no certain schedule for review and approval. In the responsibilities section of the MOU between MMS and USCG, a lead agency is identified not only for each system, but also for each sub-system. For example, each agency is identified as the lead agency for some aspect of the station keeping system (including foundations, moorings, and tethering systems; or dynamic positioning). Each agency must review the design of the station keeping system with respect to foundations, moorings, and tethering systems, since it affects the floating stability of the facility and the drilling and production operations on the facility. Any disagreements will need to be discussed and resolved, and MMS cannot guarantee a certain review and approval schedule in such situations.

Concerning proposed § 250.910(d), now § 250.916(c) in this final rule, OOC commented:

* * * These requirements appear to be based on fixed platforms and are not applicable to floating platforms. The requirement to submit the design CVA

reports within 6 weeks of receipt of the design data for a fixed platform is too short a period. Recommend that the requirement be revised to within 90 days of the receipt of the design data, but at least prior to facility installation. For floating platforms, the complete design data is not provided to the CVA in one package; therefore, there should be some recognition of a phased approach. In all cases, the final report should be issued to MMS prior to installation.

Shell provided similar comments.

MMS agrees with OOC and Shell, and amended final § 250.916(c) to specify that the CVA must submit the design verification report within 90 days of the receipt of the design data. However, MMS has also specified that the design verification report must be submitted before fabrication begins, rather than before installation begins.

Also, OOC and Shell commented concerning proposed § 250.911(f) that the requirement to submit the fabrication CVA reports immediately after completion of the fabrication is not really defined. They recommend that the requirement be revised to within 90 days of the completion of fabrication, but at least prior to facility installation.

MMS agrees with OOC and Shell, and amended final § 250.917(c) to specify that the CVA must submit the fabrication report within 90 days of the completion of fabrication, but before installation begins.

OOO and Shell also commented concerning proposed § 250.912(e) that the requirement to submit the installation CVA reports within 2 weeks of completion of the installation is too short a period. They recommended that the requirement be revised to within 30 days of the completion of the facility installation.

MMS agrees, and amended final § 250.918(c) accordingly.

Issue No. 7: MMS Should Write Clear and Comprehensive Regulations That Do Not Require Later Notices to Lessees and Operators (NTLs) To Explain or Interpret Regulations to Industry

In its cover letter to MMS concerning the proposed rule, OOC commented:

Further, we have heard comment by MMS that either in conjunction or following this rulemaking effort, MMS is considering issuing a Notice to Lessees (NTL) explaining the interpretation of the regulation. We believe that the regulation should be written in a clear, comprehensive fashion such that a NTL, if needed at all, would only cover limited areas. Appropriate areas to be included in a NTL would be such specifics as a time frame for conducting inspection under API RP 2A for existing platforms and a list of acceptable CVAs.

MMS agrees. The agency has written this rule to be as comprehensive and

clear as possible to minimize the chances that an NTL will be required. If it is found that an NTL is needed, MMS agrees it should only address limited, site-specific areas, and provide guidance on how to implement the existing regulation.

Issue No. 8: Floating Platforms Designed According to "Class" Should Not Need Specific Approval of the MMS Regional Supervisor

Concerning proposed § 250.901(b), both OOC and Shell stated:

If an operator chooses to Class his floating platform, the systems covered by Class should be allowed to be designed to Class rules without seeking specific approval from the Regional Supervisor.

MMS recognizes that the decision to design a platform according to "Class" requirements provides a level of safety in verifying the structural stability of the platform. However, since this decision is optional and there is no requirement to maintain the Class of a platform, MMS must ensure that all OCS platforms meet MMS regulations. Therefore, all OCS platforms, including those that the lessee or operator chooses to design according to Class requirements, will continue to be specifically approved by the MMS Regional Supervisor under current regulations.

Concerning proposed § 250.902(j), now § 250.905(j) in this final rule, Shell commented:

The Certification required in (j) 'The design of this structure has been certified by a recognized classification society * * *' is stated as if the design at the time the application has been made has already been reviewed and approved. At the time the application is made, the design of a floating structure will NOT have been certified by a recognized classification society. We recommend that you restate the Certification to 'The design of this structure will be certified * * *'.

MMS cannot agree with the requested word change. Because of the schedule on some projects, MMS receives applications for platforms prior to the design being completed. However, these applications must include evidence that the design is in the process of being certified. Prior to installation, a final certified design must be submitted for approval by the MMS Regional Supervisor.

Concerning proposed § 250.903(a), § 250.910(a) in the final rule, OOC and Shell commented:

If an operator chooses to Class the structure, the systems covered by Class should not be subject to the Verification program, rather the operator should be required to submit a Class certificate once it

is issued following the installation of the structure.

In order for MMS to agree with the OOC and Shell proposal, MMS would have to agree to defer to the procedures used to Class each floating platform, and MMS would also have to require that the Class for each floating platform be maintained and renewed for the life of the platform. As explained in its response to the first comment on this issue, MMS will not do that. The PVP is not an optional program in lieu of designing a platform according to Class requirements. This program has served MMS and industry well, and MMS intends to continue to maintain the program of third party verification for platform design, fabrication, and installation. Under the OCS Lands Act, MMS is obligated to oversee oil and gas exploration, development, and production operations on the OCS to ensure that they are conducted in a safe manner. The verification of production platforms is a part of that responsibility.

Issue No. 9: MMS Should Better Define What Is Meant by "New" Floating Platforms and "Major Modifications"

Newfield commented, "Definitions of 'new' and 'major modification' are vague and require more precise definitions to prevent confusion and interpretation problems."

Also with respect to new facilities, OOC and Shell commented regarding § 250.800(b) and Subpart I:

1. How is 'new' defined? It should be realized that in many cases there is a long lead time between the initial design of the platform, the facilities, mooring and risers and fabrication and installation. All floating platforms currently in either the late stages of design or being fabricated may not fully comply with all of the proposed regulations. This comment is applicable to other parts of the proposed regulation where 'new' is utilized.

2. How are fixed and floating platforms handled that are reused or relocated to a different block than where they were originally sited? Is the design grandfathered to the rules in place at the time the unit was designed, fabricated and originally installed or will it have to meet any new requirements that have been adopted since the initial installation? Is there a difference in the way fixed platforms are handled from floating platforms?

From MMS's perspective, a "new platform" means a newly-constructed platform at a certain location, or a used platform that is either moved to a new site or used for a new purpose. In the first situation, the platform is considered a "newbuild." In the latter situation, it would be a used platform converted for a new use or at a new site. There is no "grandfathering" of prior

standards for relocated platforms. For either a newbuild or a relocated/new-use platform, the platform would have to meet MMS regulations as they exist at the time the platform design is reviewed (or re-reviewed) by MMS. For fixed platforms, all design, fabrication, and installation requirements would be governed by MMS regulations. Floating platforms would be governed by both MMS and USCG regulations, as described above in the Issue No. 2 discussion concerning the MOU between MMS and USCG.

In the case of a used platform, the design is approved for the new use or site, and the used platform would have to meet the requirements of Section 15 of API RP 2A, which addresses the key aspects of reused platforms. Relocated facilities would have to meet all new requirements, and pass the inspection requirements listed in Section 15 of API RP 2A. The Twenty-first Edition of API RP 2A was incorporated into MMS regulations under a separate rulemaking on April 21, 2003.

Although API RP 2A addresses fixed structures, MMS would apply some of the principles and methodologies outlined in API RP 2A for reused facilities to floating platforms also. In addition, there are certain structural fatigue considerations related to floating platforms that are partly covered in other API standards, such as API RP 2FPS and API RP 2SK, and which would be applicable to reused floating facilities. Finally, a reused floating facility relocated to a new site would be treated as a new facility requiring an API RP 14J hazards analysis.

Once the design for any fixed or floating platform is approved, MMS regulations at the time of the design approval will govern the fabrication and installation phases as well. In that sense, the subpart I regulations are grandfathered when the platform design is approved for a specific platform, use, and location. MMS has always followed this principle under subpart I.

Concerning proposed § 250.900(a), (§ 250.900(a) and (b) in this final rule), OOC commented:

Although major modification is vaguely defined in 250.900(a)(2), industry is confused by the definition and it is not clear what MMS means by the definition. Either more precise definition is needed or examples need to be given. Is there a difference in major modification to a fixed platform versus a floating platform?

OOC and Shell further commented concerning proposed § 250.903(c), (§ 250.909 in this final rule):

What constitutes a major modification to a fixed or floating platform? Does it include

such things as increased loading due to additional topsides equipment or loading from additional wells or risers?

From MMS's perspective, a major modification would be any modification to a structure that affects loading by more than 10 percent. This definition follows the principle that MMS has used over the years, as well as the guidance in API RP 2A, Section 17, "Assessment of Existing Platforms," Subsection 17.2.6, "Definition of Significant." This definition states: "Cumulative damage or cumulative changes from the design premise are considered to be significant if the total of the resulting decrease in capacity due to cumulative damage and the increase in loading to cumulative changes is greater than 10 percent." Although, the subsection is written to apply to either damage or structural changes, MMS believes this is a good principle to follow for all platforms. This is especially important for floating platforms, because of the stability issues that arise when additional loads are added to floating structures. Thus, when OOC and Shell ask whether a "major modification" could include "increased loading due to additional topsides equipment or loading from additional wells or risers," the answer is "yes." Also, repairs to a structure to correct damage could be seen as a major modification if they increase loading on the platform by 10 percent or more.

MMS will evaluate proposed modifications on a case-by-case basis. Language has been added to both § 250.900(b) and § 250.910(c) in this final rule to clarify that a major modification includes any modification that increases loading on a platform by 10 percent or more, and requiring that lessees and operators consult with both MMS and USCG in seeking approval for a major modification to a floating platform.

Issue 10: The Application of American Petroleum Institute (API) Recommended Practice (RP) 14J, and API RP 2FPS to "New" Floating Production Platforms Needs Clarification

Concerning proposed § 250.803, ABS commented:

We note the proposed incorporation of API RP 14J into the revised rules. In this regard, we note that much of 14J was written from the standpoint of use with fixed platforms. With respect to floating structures (such as spars and FPSO's) it is unclear whether the risk assessment methodologies and checklists accompanying the 14J document will adequately cover the integration of vital process and marine systems (such as ballast control, stability, marine system integration, cargo transfer, etc.), where simultaneous

operations and cross-overs are prevalent. The hazards assessment methodology proposed by MMS should therefore consider ways to ensure that strict adherence to 14J in carrying out a hazards analysis on a floating installation will address this vital marine/process system relationship.

Concerning proposed § 250.901, ABS commented:

It is noted in the proposed rulemaking commentary that API RP 2FPS is an umbrella document imposing no new requirements directly. Structural and production facility requirements are specifically referenced throughout § 250. Prior to this rulemaking MMS had no specific rules for marine and other non-production related systems for floating production units, as are found in API RP 2FPS. A specific statement as to MMS intentions relative to these non-production systems would be appropriate.

MMS agrees with ABS that API RP 14J and API RP 2FPS may not by themselves completely address all aspects of floating facilities to be regulated under subpart I. Nevertheless, these two industry references serve very useful purposes. API RP 2FPS provides guidance on all of the associated marine systems, as well as drilling and production systems, and how they fit together and interact with each other. MMS knows of no other standard that performs this function. Though API RP 14J was initially developed to address hazards analysis approaches for drilling and production systems on fixed offshore platforms, these same systems will be installed on floating offshore platforms. Further, the hazards analysis approaches presented in Section 7 of API RP 14J will prove important in considering simultaneous operations and cross-over that will occur on floating offshore platforms. That is why MMS is incorporating these two documents by reference into our regulations, and intends to employ them, as appropriate, in our review of new floating production facilities.

Issue No. 11: The Application of American Petroleum Institute (API) Recommended Practice (RP) 2A to Fixed Production Platforms Needs Clarification

ABS commented concerning proposed § 250.901:

The document adopts the API-RP2A-WSD. Is the API - RP2A - LRFD not acceptable at this time for any application? Some of the requirements in API - RP2A - LRFD, such as hydrostatic collapse of tubular members for deepwater applications, may be more reasonable than those in WSD. If acceptable, guidance in the regulations should specify load and resistance factors.

Since the early 1980s, MMS has followed the policy currently outlined in § 250.141 of our operating

regulations, whereby MMS promotes the use of technology or innovative practices that are not specifically mentioned or otherwise covered under our regulations. For example, § 250.141 tells the lessee or operator that "You may use alternate procedures or equipment after receiving approval as described in this section." The approval must be in writing from either the MMS District or Regional Supervisor. Paragraph (a) of § 250.141 requires that "Any alternate procedures or equipment that you propose to use must provide a level of safety and environmental protection that equals or surpasses current MMS requirements." Paragraph (c) of § 250.141 requires that the lessee or operator submit information or provide an oral presentation to describe the site-specific applications, performance characteristics, and safety features of the proposed alternate procedures or equipment.

Thus, if a lessee or operator believes that the load and resistance factors design (LRFD) version of API RP 2A is more appropriate for its proposed platform than the working stress design (WSD) version, the lessee or operator may submit its arguments to use the former under § 250.141 of MMS operating regulations. As stated previously in this discussion, MMS has already incorporated the Twenty-First Edition of API RP 2A into our regulations under a separate rulemaking dated April 21, 2003.

Issue No. 12: MMS Should Publish a List of Acceptable CVAs for Various Types of Structures

In their cover letter, OOC commented:

* * * In lieu of submitting a qualification statement and obtaining approval for each CVA for each project, MMS should publish a list of acceptable CVAs for various types of structures for which a qualification statement is not required. For example, ABS and DNV for spars and TLPs. If an operator wanted to use a CVA not on the "approved" list, then a qualification statement would be required and the CVA would have to be approved.

MMS does not agree with this recommendation. In 1979, when the PVP was first instituted, MMS' predecessor agency maintained a list of acceptable CVAs for various types of offshore platforms and for the various phases of the verification process, as proposed in OOC's comment. However, it soon became apparent that, as a result of the movement of personnel between companies and continuous changes in a company's workload, the qualifications of the companies on this list changed frequently. It was not possible to ensure that a specific company maintained the required expertise to remain on the CVA

list on a long-term basis. Also, some companies discovered that being on such a list did not ensure that they would receive any work as a CVA. Therefore, MMS stopped maintaining a list of acceptable CVAs and began to allow OCS lessees to nominate their selection of a company or a person to act as their CVA on a case-by-case basis for each project and phase of the project. This approach was already implemented in our regulations and is continued in the new subpart I under § 250.914.

Issue No. 13: There Should be More Guidance in Proposed §§ 250.902 and 250.903, Now Numbered as Final §§ 250.905 and 250.910, Concerning CVA Responsibilities for Review of (1) Drilling and Production Risers, and Riser Tensioning Systems; (2) Turrets and Turret-and-Hull Interfaces; (3) Foundations and Anchoring Systems; and (4) Mooring or Tethering Systems

Concerning proposed § 250.902, OOC commented:

* * * We also note that no information has been requested to be submitted in the platform application on the drilling and production risers and tensioning systems for floating platforms even though these are proposed to be covered under the CVA program. What information are we required to provide to either MMS or the CVA on these elements?

OOC made a similar comment regarding proposed § 250.903(b), as follows:

1. While it may be prudent to include drilling and production risers and riser tensioning systems in the CVA program for design, it is problematic to include these into the fabrication and installation CVA program. The risers and tensioning systems will be fabricated for wells as needed, they are not all fabricated at one time similar to platform (sic). We question the value returning to the CVA fabrication process each time a riser or tensioning system is fabricated. The risers and tensioning systems are installed on each well as it is drilled. We question the value of having the installation verified through the CVA program. If a conventional marine riser is utilized for drilling operations, it should be excluded from the CVA process.

2. Since the structures listed as (1)(2)(3) and (4) are not mentioned in § 250.902, it is not clear what information MMS expects to be provided in the application process or in the CVA process. Please clarify.

Concerning proposed § 250.910(b), (§ 250.916(b) in the final rule), OOC commented:

The scope of work for the CVA design review of drilling and production risers and tensioning systems is not clear. MMS should provide additional guidance on the CVA duties for these elements.

Concerning proposed § 250.912(a), (§ 250.918(b) in the final rule), OOC commented:

We note that there are no requirements for drilling and production risers and tensioning systems listed in the CVA duties. Although we believe that the installation of these systems should not be included in the CVA's duties, if MMS disagrees and includes them in the CVA process, then the CVA's duties should be specified.

ABS submitted a similar comment concerning proposed §§ 250.911 and 250.912 (§§ 250.917 and 250.918 in the final rule):

* * * These sections refer to the applicable provisions of the documents in 250.901(a). As API RP 2RD and Spec 17J are specifically design oriented, clarification is required regarding MMS intentions relative to Fabrication and Installation CVA activities.

As an initial matter, and with respect to these comments generally, when MMS requires that an item be reviewed by a CVA under the PVP, that item must be included with the lessee's platform application. As noted by the commentors, API RP 2RD and API Spec 17J are primarily oriented toward the design of risers and unbonded flexible pipe, respectively, and not the fabrication or installation of these risers or pipelines at an offshore platform. (API Spec 17J is discussed more completely in connection with the next issue.) Nevertheless, MMS has required a CVA review for design, fabrication, and installation of drilling and production risers, and riser tensioning systems for all floating platforms, as discussed below.

Second, MMS has added language to the application table in § 250.905 to clarify that the following information required under § 250.910(b) is to be included in a lessee's platform application: (1) Drilling, production and pipeline risers, and riser tensioning systems; (2) turrets and turret-and-hull interfaces; (3) foundations, foundation pilings and templates, and anchoring systems; and (4) mooring or tethering systems. Additionally, language was added in §§ 250.916 through 250.918 to clarify that these four categories of information must be reviewed by a CVA for the three phases of design, fabrication, and installation.

Third, each riser type and the tensioning system for that riser type is to be approved by a qualified CVA for the design phase, the initial fabrication phase, and the initial installation phase for that riser and riser tensioning system. After the first fabrication and first installation of a given type of riser and attendant riser tensioning system, MMS agrees that it is not necessary to

return to the CVA fabrication and installation process for each additional riser or riser tensioning system for that riser type. Language has been added to §§ 250.917 and 250.918 to clarify this point.

It is important to bear in mind, however, that each additional riser and riser tensioning system adds a significant load to a floating platform, so the overall platform must be designed to accommodate all the loads imposed by additional risers and riser tensioning systems. MMS will review plans for additional risers and riser tensioning systems to ensure that the overall platform design can accommodate the additional elements.

Concerning proposed §§ 250.911 and 250.912, (§§ 250.917 and 250.918 in the final rule), ABS further commented:

* * * MMS is encouraged in the recognition of industry design, fabrication and installation requirements more specific than, but fulfilling compliance with the new proposed rules. This is to ensure harmonization of requirements for joint responsibility areas between MMS and USCG as well as with relevant third parties, such as classification societies, and reducing the risk of differing requirements for the same item by different parties.

MMS recognizes the complexities of issuing permits for floating production facilities related to the overlapping responsibilities of MMS and USCG. These processes are, of necessity, further complicated by the third-party reviews of CVAs and classification societies. This will require continuous cooperation and refinement of coordination between MMS and USCG, as well as the various industry standards-setting organizations.

Issue No. 14: Concerning Installation of Unbonded Flexible Flowlines and Pipelines Under §§ 250.803(b)(2)(iii), 250.1002(b)(4), and 250.1007(a)(4), Respectively, It Is Unclear How MMS Will Handle the Independent Verification Agent (IVA) Reviews

OOO and Shell commented concerning proposed § 250.803(b)(2)(iii):

When does the third party review of unbonded flexible pipe flowlines have to be submitted to MMS? What is MMS going to do with the IVA review? Does the review have to be approved by MMS?

OOO and Shell further commented concerning proposed § 250.1007(a)(4):

It should be recognized that the third party review may not be available at the time the initial pipeline application is submitted. This requirement should be reworded to say that the third party review must be submitted prior to the pipeline application being approved.

Similarly, ABS submitted the following comment concerning proposed §§ 250.803(b)(2)(iii), 250.1002(b)(4), and 250.1007(a)(4):

The Independent Verification Agent (IVA) per API SPEC 17J is noted in the Introductory supplementary information of the notice of proposed Rulemaking as being equivalent to the Certified Verification Agent (CVA) per MMS rules. However, this equivalency is not specifically addressed within the above cited proposed rule sections. Such a clarification is suggested for clarity.

In light of these comments, MMS has reconsidered the requirements of API Spec 17J. The IVA review requirements in that standard are intended to pertain only to the design and manufacturing process of unbonded flexible pipe, not the actual installation of the pipe on location. In this context, the IVA described in API Spec 17J does not serve the same role that the CVA serves in subpart I of our regulations. Therefore, §§ 250.803(b)(2)(iii), 250.1002(b)(4), and 250.1007(a)(4) have been modified to require that the lessee or operator installing flowlines or pipelines of unbonded flexible pipe (1) Review the Design Methodology Verification Report, and the IVA's certificate for the design methodology contained in that report, to ensure that the manufacturer has complied with the requirements of API Spec 17J; (2) determine that the flexible pipe is suitable for its intended purpose on the lease or pipeline right-of-way; (3) submit to the MMS District or Regional Supervisor the manufacturer's design specifications for the pipe; and (4) submit to the District or Regional Supervisor a statement certifying that the pipe it has chosen is suitable for its intended use, and that the manufacturer has complied with the IVA requirements of API Spec 17J.

Issue No. 15: The Requirements for In-Service Inspection Plans (ISIPs) Need To Be Clarified, Particularly Concerning Floating Platforms and USCG Responsibility for ISIPs for Floating Platforms.

OOO provided the following comments concerning proposed § 250.902 (§ 250.905 in the final rule):

Document (i) requires that an in-service inspection plan be submitted for both fixed and floating platforms with the application. In the MOU between the USCG and the MMS, USCG has been given sole jurisdiction of structural inspection requirements for floating platforms, with the USCG copying MMS on approvals and compliance records. Industry is confused over the rationale for MMS to adopt In-service Inspection Plan (ISIP) requirements for floating platforms. MMS should coordinate any requirements for ISIP review and inspection oversight with the

USCG, to eliminate a duplicate or parallel program. We also question the timing of the submittal of the inspection plan. Since the first inspection is normally not due for at least a year after installation, we recommend that any ISIP that is required to be submitted not be submitted with the platform application, but within 1 year after installation. Clarification is also needed on the in-service inspection agency jurisdiction for mooring and station keeping systems. It is also unclear what information the MMS expects to see in an ISIP for either a fixed or floating platform. Also, since the ISIP has to be submitted with the platform application, this suggests that each platform has to have an individual inspection plan. It would be less burdensome on both industry and MMS to develop a generic inspection, at least for fixed platforms, that covers the different types of platforms that an operator has with perhaps a table covering the individual platforms.

Shell provided similar comments regarding proposed § 250.902 (final § 250.905).

OOO provided the following comment concerning proposed § 250.916(a) (final § 250.919(a)):

1. For floating facilities the In-Service Inspection Program (ISIP) duplicates the vessel inspection program already required and being done by the USCG. MMS should coordinate any requirements for ISIP review and inspection oversight with the USCG, to eliminate duplicate or parallel programs.

2. Since the proposed regulation calls for submitting an inspection with a platform application, does MMS envision that inspection plans be generated for existing platforms? If so, do they have to be submitted to MMS for review or approval? Does each facility have to have its own plan? Can one plan cover all of an operator's structures or does each structure have to have its own plan?

Shell provided similar comments regarding proposed § 250.916 (final § 250.919), paragraphs (a) and (b).

MMS disagrees with the claim that the requirement for ISIPs is a new and unjustified requirement. ISIPs are required under our current subpart I regulations, so any existing platform not covered by an ISIP would not be in compliance with our regulations.

MMS first implemented the requirement for a periodic structural inspection of all fixed platforms installed on the OCS in April 1988, after it was proposed by the Marine Board of the National Academy of Sciences. Oil and gas industry representatives participated on the Marine Board when it made the recommendation.

The MMS ISIP requirement and the API standards provide starting points for developing ISIPs for fixed and floating offshore platforms. It should be expected that an ISIP for a given facility would have to be modified if

subsequent experience indicates that it is not adequately covering a certain aspect affecting the stability or safety of the platform or its associated structures.

MMS disagrees that an ISIP should be provided within 12 months after the installation of an offshore facility, instead of with the platform application. Periodic inspection issues affect the design of an offshore facility, and therefore must be considered during the design of an offshore facility. Periodic inspection issues also must be considered during the initial review by the regulatory agencies. The original designers of a platform are usually best qualified to design the ISIP for that platform. Therefore, MMS encourages lessees and operators to at least consult with their original designers in the development of an ISIP for a platform.

In response to OOC's comment that it is unclear what information MMS expects to see in an ISIP for either a fixed or floating platform, MMS expects the ISIP to reference all relevant API or other industry standards. OOC's observation that it appears that MMS expects each platform to have an individual inspection plan is correct. Each platform should have its own ISIP. However, if a lessee or operator has a number of platforms that are all of the same type, it is acceptable to have one generic ISIP covering all those platforms. The generic ISIP would have to be modified to address the unique environmental conditions affecting each specific platform. Also, for each platform having significant structural features distinguishing it from the generic type, the generic ISIP would have to be tailored to accommodate the significant distinguishing structural features of that platform.

MMS also disagrees that the USCG has sole jurisdiction for the structural inspection requirements for floating platforms. The USCG has the lead responsibility for the floating facility hull. However, USCG does not have lead responsibility for the turret, turret/hull interface; the risers and their tensioning systems and interface with the hull; the foundations and anchoring systems; or the mooring or tethering systems. MMS has the lead responsibility for these systems, any or all of which could adversely affect the safety and stability of the hull of a floating facility. Since the hull and interconnected MMS-regulated systems are so intertwined, to be relevant and complete an ISIP should address all the systems within the regulatory responsibility of both MMS and USCG.

MMS and USCG currently meet regularly to discuss their concerns with various aspects of each platform

submission, and to work out regulatory differences prior to responding to the submitting companies. This process will continue, to ensure that submitting companies will not be given conflicting instructions. Because MMS and USCG hold ongoing discussions concerning their respective responsibilities for offshore floating platforms, the agencies may, from time to time, amend their MOU regarding oil, gas, and mineral exploration and production operations on the OCS.

Issue No. 16: For Platforms Subject to the Platform Verification Program, MMS Should Provide More Clarity Concerning Which Documents Go to MMS and Which Go to the CVA

In its cover letter, OOC commented:

It is also unclear why MMS needs to get a copy of many of the items that are submitted directly by the operator or design firm to the CVA for review. For example, why does MMS need to receive abstracts of the computer programs used for design when the same information must be given to the CVA? It appears to be redundant for MMS and the CVA to review the same documents. Since a number of floating platforms have now been permitted, we recommend that MMS consider revising the structure application and CVA plan to better reflect the actual way floating platform projects are sequenced and to consider what information MMS needs to review and what needs to be given directly to the CVA * * *.

Concerning proposed § 250.902 (final § 250.905), OOC and Shell commented:

For platforms subject to the Platform Verification Process, the rationale for submitting a full application to MMS, including a complete set of structural drawings, etc., is unclear since the information will also be provided to the certification agency to verify the design. It would appear to be more appropriate to submit (a),(b),(c) and (j) to MMS with the rest of the information submitted to the CVA. In many instances all of the information required is not available at the time the application needs to be made for a floating platform in order to kick off the CVA program.

From a regulatory perspective, it is important to remember that the CVA process was initiated because MMS does not maintain an engineering staff large enough to comprehensively review all structural engineering designs for platforms on the OCS. Thus, a CVA helps ensure that all regulatory requirements are met. However, because of our custodial responsibility for all information related to the design and structural integrity of offshore platforms, it is essential that MMS receive all the same documents and correspondence that the lessee or operator provides to its CVA concerning

the design, fabrication, and installation of a fixed or floating platform. This includes the computer programs used for design that OOC referred to in its cover letter. For MMS to stay current with the industry it regulates, we must stay abreast of the various types of software that the industry uses on a routine basis.

Concerning the observation by OOC and Shell that sometimes all required information is not available at the time the application for a floating platform needs to be made, MMS understands that design, fabrication, and installation sequences do not always follow a set pattern. MMS is always willing to work with lessees and operators to accept partial submittals of information, as they become available, to complete what is a necessarily complex permitting process.

Concerning proposed § 250.904(b), (§ 250.911(c) in the final rule), OOC commented that MMS may need to provide more guidance to the CVA to ensure that they are only verifying the operator's proposed design to ensure that it meets the required regulations, not conducting a complete design analysis.

Although MMS agrees with OOC's premise that the CVA primarily functions to ensure that the lessee's or operator's design, fabrication, or installation meets regulatory requirements, it is important to remember that oftentimes the offshore industry is trying out new technology or innovative practices. For innovative proposals which could involve novel components or structures, MMS will require the lessee's CVA to conduct a complete design analysis.

Issue No. 17: Further Clarification Is Needed Concerning the Structural Fatigue Requirements in Proposed §§ 250.913 and 250.914 (Final §§ 250.908 and 250.903(b))

Concerning proposed § 250.913, OOC commented:

The table does not appear to take into account the minimum requirements in API RP 2RD and 2SK. We recommend that the table be amended to meet the minimum requirements required in the documents incorporated by reference unless MMS is intending to relax those requirements. While we recognize that the table only contains absolute minimum requirements, we note that Class society requirements have a higher minimum threshold that must be met for Classed structures.

MMS agrees with OOC's comment concerning the minimum requirements contained in the industry standards that are included as documents incorporated by reference in § 250.901. Section

250.908 of the final rule has been rewritten to provide clarity.

Also concerning proposed § 250.913 (§ 250.908 in the final rule), ABS commented:

The current practice on fatigue safety factors are based on API RP 2T considering repairability, inspectability and criticality (redundancy) of the members and joints. The

API RP 2T fatigue requirements are widely used in the site specific floating structures (TLPs, column-stabilized units, spars, etc.). The recommended fatigue safety factors (2 and 3) consider only one (redundancy) of these three factors. For the deck structure, which is above the water line, these safety factors are appropriate because it is accessible for inspections and repairs. However, for the hull structure, which is

always below the water line, the recommended fatigue safety factors may not be appropriate because good quality inspections and repairs will be difficult to carry out in some areas of the hull. The Rules should also indicate that the other two factors need to be considered if applicable. The following are the safety factors normally used for the hull structure of a site-specific floating structure in current practice.

Criticality	Inspection	Repair	Factor of safety
Critical	Easily inspectable	Field Repair	5
Critical	Difficult or Non-inspectable	Difficult or Non-repairable	10
Non-Critical	Easily inspectable	Field Repair	3
Non-Critical	Difficult or Non-inspectable	Difficult or Non-repairable	5

Requirements for the fabrication, installation, and inspection of the hull of floating structures, and the appropriate safety factors to use, are under the jurisdiction of the USCG. The structural fatigue safety factors listed in proposed § 250.913 (final § 250.908) refer to fixed platforms. For fixed platforms, which have a long history of proven performance, MMS prefers to rely on the safety factors recommended by the referenced documents in § 250.901. The safety factors in those documents are based on industry consensus, and may be re-evaluated as industry gains even more experience. They can be changed later by industry consensus, and those changes in turn incorporated by MMS.

Concerning proposed § 250.914 (now § 250.903(b)), OOC and Shell commented that it is not clear where the records on the origin and material test results are to be kept on all primary structural materials covered by this section.

The records on the primary structural materials should be kept at the same location that the lessee or operator specifies in item (j) of the table in final § 250.905. The regulatory language of final § 250.903 has been modified to make this clear.

Issue No. 18. The Proposed Rule Provides Inadequate Guidance on the Use of Shallow Hazards and Geological Surveys in Siting Platforms

ABS submitted the following comment concerning proposed § 250.915 (§ 250.907 in the final rule):

4. It would be helpful for the MMS to provide guidance as to the acceptance criteria for faults such as the minimum distance from the faults to the foundation and what type of fault studies are recommended. This issue has not been addressed in any of the referenced documents listed in § 250.901. Faults have been encountered in deepwater applications.

5. It will be useful for the offshore industry if MMS's policy on the required pile capacity at first oil is specified in the CFRs.

MMS reviewed the requirements for shallow hazards, geologic, and subsurface surveys in our former subpart I, and compared them to the requirements already incorporated in the twenty-first edition of API RP 2A and the API documents to be incorporated by reference by this rule. Based on this comparison, MMS believes that it was unwise to remove so many of our survey requirements in the proposed rule. However, MMS believes that API RP 2A and the other API documents more than adequately address many of the subsurface issues that arise in designing various types of foundations and pilings. Accordingly, MMS has restored an abridged version of our former requirements to the final rule. MMS has inserted the abridged hazard, geologic, and subsurface survey requirements into a new § 250.906 in the final rule.

Section 250.915 in the proposed rule dealt with the requirement for a minimum 500-foot interval between a soil boring and a foundation piling. The sections in the final rule have been renumbered and rearranged so that the proposed § 250.915 is now final § 250.907.

In answer to ABS' first question concerning "acceptance criteria for faults such as the minimum distance from the faults to the foundation and what type of fault studies are recommended," MMS believes that such judgments have to be made on a case-by-case basis depending on the design of the platform and the nature of the sediments into which its foundations or anchors are to be set. The abridged survey requirements in final § 250.906 will enable the lessee or operator to make such determinations for its proposed platform.

Concerning ABS's second request for us to specify "MMS's policy on the required pile capacity at first oil," MMS believes that judgments on pile capacity again will have to be made case-by-case, based on the results of the shallow hazard, geologic, and subsurface surveys required by § 250.906 of this final rule.

Issue No. 19: Respondents Disagree With the Proposed § 250.915(a) Requirement (Now § 250.907(a)) for Fixed or Bottom-Founded Platforms and Tension Leg Platforms That the Maximum Distance From a Foundation Pile to a Soil Boring Must Not Exceed 500 Feet

OOC and Shell commented on proposed § 250.915(a) (now § 250.907(a) in this rule) as follows:

1. Spatial variability of soil properties on the continental shelf is much more of an issue than for deepwater sites. For jackets on the shelf, maximum distance between borings of 500 ft. is reasonable for deterministic designs with conventional safety factors. However, it is possible to have cases where multiple borings are spaced farther apart, but the uncertainty at the platform site may be explicitly quantified and specific safety factors developed accordingly.

2. In lieu of the prescriptive requirement as proposed, the wording from ISO/DIS 19901-4 could be adopted:

Geotechnical and Foundations Design Considerations. Results of previous integrated geoscience studies and experience at the site may enable the design and installation of additional structures without additional investigation. The onsite studies should extend throughout the depth and aerial extent of soils that will effect or be affected by installation of the foundation elements. The number and depth of borings and extent of soil testing will depend on the soil variability in the vicinity of the site, environmental design conditions (e.g. earthquake loading and slope instability) to be considered in the foundation design, the structure type and geometry, and the definition of geological hazards and constraints.

3. For TLPs in deepwater, the industry practice is to conduct an integrated geotechnical/geology study of the site to assess spatial variability of soil stratigraphy and physical properties. Given the same depositional environment and geologic processes, practice has shown at several prominent deepwater basins that borings up to 10 miles apart do not produce appreciably different pile sizes considering the same load. Also, the uncertainty in soil properties at the platform site may be explicitly quantified and specific safety factors developed accordingly.

ABS submitted the following comment concerning proposed § 250.915 (final § 250.907):

* * * It will be very helpful to the offshore industry to clarify requirements as to the maximum distance of the soil boring from the foundation piles and number of borings. It would also be helpful to clarify if the borings can be replaced by other means of taking soil samples such as CPT or by a combination of geotechnical investigation and geophysical survey.

MMS does not agree with OOC, Shell, and ABS. None of their proposals is as stringent as what MMS has proposed, *i.e.*, site-specific borings within 500 feet of the proposed foundation pile. In the deepwater areas of the OCS, particularly in the GOM, there are slope and abyssal areas that are much more geologically active than the relatively shallow and familiar areas of the OCS. There are highly active slumping and faulting zones in deepwater areas that exhibit stratigraphic shallow water flows and mud volcanoes. MMS does not believe that floating production systems in these areas should be anchored without site-specific soil boring information.

The policy currently outlined in § 250.141 of our regulations promotes the use of alternative technology or innovative practices that are not specified or otherwise covered under our regulations. Such technologies and practices may be tried on a case-by-case basis, so long as they "provide a level of safety and environmental protection that equals or surpasses current MMS requirements."

Thus, if a lessee or operator believes that for a proposed platform on a specific site it can use alternate means to assure secure foundations for the facility or its anchoring systems, it can present its evidence to the MMS Regional Supervisor under the provisions of § 250.141.

Issue No. 20: Respondents Disagree With the Proposed § 250.915(b) (Final § 250.907(b)) Requirement That for Deepwater Floating Platforms Utilizing Catenary or Taut-Leg Moorings, Borings Must Be Taken at the Most Heavily Loaded Anchor Location, at Anchor Points Approximately 120 and 240 Degrees Around the Anchor Pattern From That Boring, and as Necessary to Establish a Suitable Soil Profile

Concerning proposed § 250.915(b), OOC and Shell commented as follows:

Recognizing that deepwater developments with moored floaters and many subsea wells may cover a very large lateral extent (with the layout in a constant state of flux), an alternative site investigation strategy would be to base geotechnical data collection locations on the prevailing geology rather than specific facility locations. An integrated geotechnical/geology study of the development area is required for this methodology "*i.e.*, stratigraphy must be known at any specific foundation location and uncertainties quantified. Specific safety factors may be developed accordingly.

OOO further noted, "This section is prescriptive in nature and we recommend that a performance based requirement be adopted."

Again, MMS disagrees with OOC and Shell for the same reasons as discussed in the preceding issue concerning the maximum distance from a foundation pile to a soil boring. If a lessee or operator believes that for a proposed platform on a specific site it should use a different boring pattern, or alternate means to assure a secure anchoring pattern for a floating facility, it can present its arguments for a different boring pattern, or alternate method to the MMS Regional Supervisor under the provisions of § 250.141.

Issue No. 21: It Is Not Clear Where the Records Required by Proposed § 250.918 (Final § 250.903) Must Be Kept

OOO and Shell maintained that it is not clear where the records should be maintained with respect to the proposed § 250.918 requirements (now in § 250.903) to keep as-built drawings, design assumptions and analyses, summary of fabrication and installation nondestructive examination records, and inspection results from the proposed § 250.916 inspections (now in § 250.919). Again, these records should be kept at the same location that the lessee or operator specifies in item (j) of the table in final § 250.905. The regulatory language in final § 250.903 has been modified to make this clear.

Issue 22: Several of the Industry Standards To Be Incorporated Into MMS Regulations at § 250.901(a) Are in Conflict With Each Other, and MMS Should Stay Involved in the Updating of Industry Standards Incorporated by Reference

OOO submitted the following comments:

Also we recognize that these industry documents are in many cases written as "stand alone" documents and that conflicts between documents may occur. For example, while reviewing API RP 510 to determine if it was appropriate to incorporate by reference by MMS, it was discovered that in several places it conflicted with API RP 14C. Industry, due to the high level of activity in deepwater and the limited staff available, has not conducted an exhaustive review to determine if conflicts occur between the proposed documents to be incorporated and other documents incorporated by reference.

* * * Industry cautions that they have not made an exhaustive review of all of the standards to ensure that there are no conflicts between the standards. If there are conflicts, these will be identified as these standards and codes are applied in conjunction with one another.

* * * A number of these recommended practices and standards are in the process of being revised to address deepwater facility requirements. MMS should stay up-to-date, and where possible participate, in the revision of these recommended practices and standards, so that new additions of the recommended practices or standards can be readily incorporated into the MMS regulations. For example, industry notes that there is confusion within API RP 2A, 21st edition that needs clarification. In at least three sections (life safety exposure, consequences of failures, inspection levels) of the RP, platforms are divided into Level 1, Level 2 and Level 3 categories; however, the definitions for Level 1, 2 and 3 are different. Therefore, when a platform is generally referred to as a Level 1 platform or a Level 3 platform, confusion is created on what that means. As API revises the documents to element [sic] the confusion, MMS should be involved so they can adopt the changes.

MMS agrees that the best method for having a working knowledge of potential revisions and additions to industry standards is to participate in the meetings of the standard setting committees. MMS has assigned technical personnel as representatives and alternates to various API, International Standards Organization (ISO), American Concrete Institute, American Society of Mechanical Engineers, American Society for Testing and Materials, American Welding Society, Institute of Electronic and Electrical Engineers, National Association of Corrosion Engineers, and International Association of Oil and Gas Producers committees. MMS also

monitors the work of other industry standards associations and committees.

MMS agrees that there may be conflicts between the specific requirements of some of the industry standards incorporated by reference into MMS regulations. Whenever these conflicts are found, MMS provides interim clarifications in Notices to Lessees and Operators (NTLs). We post these NTLs on the MMS web page. As necessary, MMS subsequently makes clarifying revisions to its regulations. Through use of these mechanisms, MMS and industry can work through the inevitable conflicts that will arise either through contradictory industry standards or contradictory Federal standards.

Issue 23: MMS Should Consider Incorporating Several Additional Industry Standards Into the MMS Regulations at § 250.901(a)

Both OOC and Shell recommended that MMS consider adopting API RP 2I, "In-Service Inspection of Mooring Hardware for Floating Drilling Units." OOC further commented:

In many cases, all or portions of a floating production are fabricated outside of the United States and welding standards that MMS has deemed for as [sic] equivalent (such as Euronorm) to AWS standards for individual projects are used. MMS should

either consider incorporating by reference these equivalent standards or should publish a list of welding standards that they have deemed to be equivalent to AWS standards in lieu of each project having to obtain approval for utilizing an alternate welding standard.

MMS agrees that API RP 2I, second edition, would be a valuable industry standard to consider for incorporation by reference into 30 CFR part 250, subparts A and I. API RP 2I is specifically written to address the inspection, and potential failure modes, of mooring chain and wire rope for MODUs, which frequently move from location to location. Moreover, the information provided in API RP 2I on failure modes, inspection methods, and repair methods also could be useful in the development and implementation of an ISIP plan (§ 250.917) for other types of offshore floating facilities that remain on station for longer periods of time. Based on OOC's and Shell's recommendation, MMS reviewed API RP 2I, "In-Service Inspection of Mooring Hardware for Floating Drilling Units," and agrees that it should be considered for incorporation by reference into 30 CFR Part 250. However, because MMS did not initially propose that API RP 2I be incorporated by reference during the proposed rulemaking process, we have decided not to incorporate it into the

final rule. It will be proposed in a subsequent rulemaking to provide the regulated community an opportunity to comment on its incorporation into 30 CFR Part 250.

As additional pertinent industry standards are identified or developed, MMS will occasionally revise its regulations to incorporate certain standards into its regulations in conformance with the Administrative Procedure Act. In those instances in which offshore facilities, both floating and fixed, are fabricated outside of the United States, foreign industry standards must receive prior approval in accordance with 30 CFR 250.901(b), which states, "* * * You may also use alternative codes, rules, or standards, as approved by the Regional Supervisor, under conditions enumerated in § 250.141, paragraphs (a), (b), and (c)." MMS has not ruled out the incorporation by reference of foreign or international standards into its regulations. During the past 2 years MMS has incorporated by reference one ISO standard into our regulations.

Derivation Table

The following derivation table shows where the requirements originate from in the final 30 CFR part 250, subpart I, regulations.

New section	Previous regulation section
§ 250.900 What general requirements apply to all platforms?	§ 250.900; New requirement.
§ 250.901 What industry standards must your platform meet?	§ 250.900(g); § 250.907(b), (c), (d); § 250.908 (b), (c), (d), (e); New requirements.
§ 250.902 What are the requirements for platform removal and location clearance?	§ 250.913 (Subpart Q since May 17, 2002)
§ 250.903 What records must I keep?	§ 250.914
§ 250.904 What is the Platform Approval Program?	New
§ 250.905 How do I get approval for the installation, modification, or repair of my platform?	§ 250.901(a), (b)
§ 250.906 What must I do to obtain approval for the proposed site of my platform?	§ 250.90(b), (c), (d), (e)
§ 250.907 Where must I locate foundation boreholes?	New Requirements.
§ 250.908 What are the minimum structural fatigue design requirements?	§ 250.907(c)
§ 250.909 What is the Platform Verification Program (PVP)?	New.
§ 250.910 Which of my facilities are subject to the PVP?	§ 250.902; New requirements.
§ 250.911 If my platform is subject to the PVP, what must I do?	§ 250.902; New requirements.
§ 250.912 What plans must I submit under the PVP?	§ 250.902; New requirements.
§ 250.913 When must I resubmit PVP plans?	§ 250.902; New requirements.
§ 250.914 How do I nominate a CVA?	§ 250.902; § 250.903(b)
§ 250.915 What are the CVA's primary responsibilities?	§ 250.903(a)
§ 250.916 What are the CVA's primary duties during the design phase?	§ 250.903(a)(1)
§ 250.917 What are the CVA's primary duties during the fabrication phase?	§ 250.903(a)(2)
§ 250.918 What are the CVA's primary duties during the installation phase?	§ 250.903(a)(3)
§ 250.919 What in-service inspection requirements must I meet?	§ 250.912(a),(b); New requirements.
§ 250.920 What are the MMS requirements for the assessment of platforms?	New requirements.
§ 250.921 How do I analyze my platform for cumulative fatigue?	New requirements.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by OMB under Executive Order 12866.

(1) This rule will not 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. The overall effect of this rule will not create an adverse effect upon the ability of the United States offshore oil and gas industry to compete in the world marketplace, nor will the proposal adversely affect investment or employment factors locally. The economic analysis prepared for this rule indicates that the estimated regulatory costs would be about \$3 million for a "generic" floating platform having 10 production risers, 2 pipeline risers, a mooring system, and 80 miles of pipelines. This represents less than 1 percent of the total cost of the facility. Assuming that plans for 6 such facilities were submitted for approval in any given year, the total annual regulatory cost to the offshore oil and gas industry would be about \$18 million [$\$3,000,000 \times 6 = \$18 \text{ million}$]. The economic analysis for this rule is available from the Department of the Interior; Minerals Management Service; Engineering & Operations Division; Mail Stop 4020; 381 Elden Street; Herndon, Virginia 20170-4817; Attention: William Hauser.

(2) This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the OCS oil and gas leasing program with other agencies' actions. These relationships are all encompassed in agreements and memorandums of understanding that will not change with this rule.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. There are many precedents for regulating offshore production platforms and pipelines to promote environmental protection and human safety under the OCS Lands Act. While this final rule contains many new regulatory requirements for lessees and operators seeking to build new floating production facilities, the incorporation of these standards does not represent a significant change to industry practices because most of these standards are already being utilized by industry.

Regulatory Flexibility (RF) Act

The DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). The economic analysis prepared for this rule concluded that not more than two lessees classified as small entities would submit plans for deepwater floating platforms in any given year. Most likely, these lessees would be involved as partners in a single application for a floating platform. To the extent that these lessees participate in such joint ventures, the costs imposed by the proposed rule on individual operators would be reduced significantly. Therefore, MMS concludes that the rule would not have a significant economic impact on a substantial number of small entities.

For the purposes of this section a "small entity" is considered to be an individual, limited partnership, or small company, considered to be at "arm's length" from the control of any parent companies, with fewer than 500 employees. Mid-size and large corporations and partnerships under their direct control have access to lines of credit and internal corporate cash flows that are not available to the "small entity." Some of the operators MMS regulates under the OCS oil and gas leasing program would be considered small entities. They are generally represented by the North American Industry Classification System Code 211111, which represents crude petroleum and natural gas extractors.

Of the 98 lessees that have deepwater leases, as many as 26 may be considered to be small. These 26 lessees represent about 33 percent of all small operators on the OCS. Of the 26, only 2 hold 100-percent interest in their deepwater leases. These two lessees have annual revenues such that they would have little difficulty in meeting the requirements of the proposed rule. In all other cases, the small lessees have reduced their deepwater economic risks by being in partnership with other lessees. Sixteen of these lessees hold less than 50 percent interest in their deepwater leases.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement

actions of MMS, call toll-free at (888) 734-3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). This rule:

(a) Does not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. (Of the 98 lessees who hold leases in deepwater and, therefore, could be affected by the proposed rule, 19 are foreign multinational corporations.)

The economic analysis prepared for this rule concluded that not more than two small lessees would submit plans for deepwater floating platforms in any given year. Most likely, these lessees' involvement would be as partners in a single application for a floating platform. To the extent that these lessees participate in such joint ventures, the costs imposed by the rule on individual operators would be reduced significantly. Therefore, MMS concludes that the rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act (PRA) of 1995

This rule contains a collection of information that MMS submitted to OMB as part of the proposed rulemaking process for review and approval under § 3507(d) of the PRA. OMB approved the information collection for a total of 37,194 burden hours (OMB control number 1010-0149). The title of the collection of information for this rule is "30 CFR 250, Subparts J, H, and I, Fixed and Floating Platforms and Structures."

As the information collection requirements in the final rule remain unchanged from the proposed rule, a resubmission to OMB for approval of the burden normally would not be required prior to publishing these final regulations. However, during the period between proposed and final rules, the OMB approval of the burden for the proposed collection of information was due to expire (March 31, 2005). Also during this interim period, the information collection burden for the current subpart I regulations (1010-0058) came up for renewal. As required by the Paperwork Reduction Act, to renew the current subpart I information

collection burden, we consulted with several respondents and revised the burden estimates and number of responses.

Where applicable, we incorporated these updated burden adjustments in the request that we submitted to OMB to renew the information collection burden for the proposed rulemaking (1010-0149). OMB approved that renewal for a total of 48,500 hours, with a current expiration date of March 31, 2008. However, MMS estimates that this final rulemaking will only increase the individual hour burdens approved for the current regulations in subpart H (1010-0059), subpart I (1010-0058), and subpart J (1010-0050), by: 3,300 hours for subpart H; 5,160 hours for subpart I; 2,700 hours for subpart J; 11,160 total burden hour increase.

The revisions to subpart A of 30 CFR part 250 in this final rule do not affect the information collection aspects of those regulations. These are currently approved under OMB control numbers 1010-0114.

Potential respondents are approximately 130 Federal OCS lessees and operators and CVAs or other third-

party reviewers of fixed and floating platforms. Responses are mandatory. The frequency of response varies by section, but is primarily on occasion or annual. The IC does not include questions of a sensitive nature. MMS will protect information considered proprietary according to 30 CFR 250.196, "Data and information to be made available to the public," and 30 CFR part 252, "OCS Oil and Gas Information Program."

MMS will use the information collected and records maintained under subpart I to determine the structural integrity of all fixed and floating platforms and to ensure that such integrity will be maintained throughout the useful life of these structures. The information is necessary to determine that platforms and structures are sound and safe for their intended purpose and the safety of personnel and pollution prevention. MMS will use the information collected under subparts H and J to ensure proper construction of production safety systems and pipelines.

When the final regulations take effect, the new information collection burdens

for subparts H and I will be incorporated with their respective collections of information for those current regulations. OMB control number 1010-0149 will supersede 1010-0058 and become the new control number for the information collection burdens in subpart I. Its title will be changed to delete the references to subparts H and J.

The rule eliminates the notice requirement currently in § 250.901(e) on transporting the platform to the installation site, and the departure request in § 250.912(a) on platform inspection intervals. This reporting change results in a decrease of 570 annual burden hours.

The following chart details the IC burden for the approved requirements in subparts H and J and all of the requirements in subpart I. In the writing of the final rule, burdens have been reassigned to new section citations. However, as noted earlier, the burdens themselves have remained unchanged from the proposed rule. The new citations as well as the citations from the proposed rule are noted below.

Rule sections	Reporting or recordkeeping requirement	Hour burden per response/record (hours)	Annual number of responses	Annual burden hours
New Subpart H Requirements				
800(b)	NEW: Submit CVA documentation under API RP 2RD.	50	60 submissions	3,000
803(b)(2)(iii)	NEW: Submit CVA documentation under API RP 17J.	50	6 submissions	300
Subpart I				
900(a), (b); 901(b); 903; 905; 906; 907; 909; 901(c), (d); 912; 913.	Submit application to install new platform or floating production facility or significant changes to approved applications, including use of alternative codes, rules, or standards; and Platform Verification Program plan for design, fabrication and installation of new, fixed, bottom-founded, pile-supported, or concrete-gravity platforms and new floating platforms. Consult as required with MMS and/or USCG. Re/Submit application for major modification(s)/repair(s) to any platform and related requirements.	30	331 applications	9,930
900(b)(5)	Submit application for conversion of the use of an existing mobile offshore drilling unit..	24	30 applications	720
900(c)	Notify MMS/USCG within 24 hours of damage and emergency repairs and request approval of repairs..	16	9 notices/requests	144
901(a)(6), (a)(7), (a)(8)	NEW: Submit CVA documentation under API RP 2RD, API RP 2SK, and API RP 2SM..	100	6 submissions	600
901(a)(10)	NEW: Submit hazards analysis documentation under API RP 14J..	600	6 submissions	3,600
903 *	Record original and relevant material test results of all primary structural materials; retain records during all stages of construction. Compile, retain, and make available to MMS for the functional life of platform, the as-built drawings, design assumptions/analyses, summary of nondestructive examination records, and inspection results..	100	136 lessees	13,600
911(c), (d), (f); 917	Submit interim and final CVA reports and recommendations on fabrication phase, including notice of fabrication procedure changes or design specification modifications..	100	6 submissions	600

Rule sections	Reporting or recordkeeping requirement	Hour burden per response/ record (hours)	Annual number of responses	Annual burden hours
914	Submit nomination and qualification statement for CVA..	16	21 nominations	336
916	Submit interim and final CVA reports and recommendations on design phase..	200	31 reports	6,200
918	Submit interim and final CVA reports and recommendations on installation phase..	60	6 submissions	360
919	Develop in-service inspection plan and submit annual (November 1 of each year) report on inspection of platforms or floating production facilities, including summary of testing results..	GOM 45 POCS 80	130 lessees	5,850
900 thru 921	General departure and alternative compliance requests not specifically covered elsewhere in Subpart I regulations..	8	10 requests	80

New Subpart J Requirements

1002(b)(5)	NEW: Submit CVA documentation under API RP 2RD.	75	12 submissions	900
1007(4)(iii), (iv)	NEW: Submit CVA documentation under API RP 17J.	150	12 submissions	1,800
Total Hour Burden			818	48,500

*The records required to be retained are such that respondents would keep them as usual and customary business practice. The burden would be to make them available to MMS for review.

A Federal 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 public may comment, at any time, on the accuracy of the information collection burden in this rule and may submit any comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817. If you wish to email your comments to MMS, the address is: rules.comment@mms.gov. You may also submit comments on the burdens through <https://occonnect.mms.gov>.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have federalism implications. This rule would not substantially or directly affect the relationship between the Federal and State governments, because it deals strictly with technical standards that the offshore oil and gas industry must use in designing, fabricating, and installing floating offshore facilities. This rule would not impose costs on States or localities, nor would it require any action on the part of States or localities.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant takings implications. A Takings Implication Assessment is not required. Based on our Paperwork Burden analysis and our economic analysis for this rule, the annual incremental cost of

complying with this regulation for approximately 98 businesses will be about \$37,194 per business, per year. This incremental cost will be absorbed by an industry sector where (1) operating costs just for a contract drilling unit to drill a single well can exceed \$1,750,000 per week, and (2) the cost of a deepwater platform can exceed \$1 billion. MMS does not believe that paying this cost will result in any takings. Thus, the DOI does not need to prepare a Takings Implication Assessment under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The rule would not take away or restrict a lessee's right to develop an OCS oil and gas lease according to the lease terms.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by OMB under Executive Order 13211. The rule does not have a significant effect on energy supply, distribution, or use, because it would streamline the regulatory review process and thereby enhance the development and production of energy resources from deepwater areas of the OCS. It would do this by specifying a single body of approved industry standards so that lessees would know in advance which design criteria are acceptable to MMS for deepwater production operations. The rule would also simplify MMS engineers' efforts in reviewing each new project to ensure structural integrity, operational and human safety, and environmental protection. This would be beneficial for

increasing energy resources and would provide more certainty to OCS lessees who assume the high financial risks of developing deepwater areas.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. MMS has analyzed this rule under the criteria of the NEPA and 516 Departmental Manual 6, Appendix 10.4C(1). MMS completed a Categorical Exclusion Review for this action on November 20, 2000, and concluded that "the rulemaking does not represent an exception to the established criteria for categorical exclusion; therefore, preparation of an environmental analysis or environmental impact statement will not be required."

Unfunded Mandate Reform Act (UMRA) of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information

required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 22, 2005.

Chad Calvert,

Acting Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, the MMS amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

■ 2. In § 250.105, the definition for “Facility” is revised to read as follows:

§ 250.105 Definitions.

* * * * *

Facility means:

(1) As used in § 250.130, all installations permanently or temporarily attached to the seabed on the OCS (including manmade islands and

bottom-sitting structures). They include mobile offshore drilling units (MODUs) or other vessels engaged in drilling or downhole operations, used for oil, gas or sulphur drilling, production, or related activities. They include all floating production systems (FPSs), variously described as column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. They also include facilities for product measurement and royalty determination (*e.g.* lease Automatic Custody Transfer Units, gas meters) of OCS production on installations not on the OCS. Any group of OCS installations interconnected with walkways, or any group of installations that includes a central or primary installation with processing equipment and one or more satellite or secondary installations is a single facility. The Regional Supervisor may decide that the complexity of the individual installations justifies their classification as separate facilities.

(2) As used in § 250.303, means all installations or devices permanently or temporarily attached to the seabed. They include mobile offshore drilling units (MODUs), even while operating in the “tender assist” mode (*i.e.* with skid-off drilling units) or other vessels engaged in drilling or downhole operations. They are used for exploration, development, and production activities for oil, gas, or sulphur and emit or have the potential to emit any air pollutant from one or more sources. They include all floating production systems (FPSs), including column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility

while it is physically attached to the facility.

(3) As used in § 250.490(b), means a vessel, a structure, or an artificial island used for drilling, well completion, well-workover, or production operations.

(4) As used in §§ 250.900 through 250.921, means all installations or devices permanently or temporarily attached to the seabed. They are used for exploration, development, and production activities for oil, gas, or sulphur and emit or have the potential to emit any air pollutant from one or more sources. They include all floating production systems (FPSs), including column-stabilized-units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc. During production, multiple installations or devices are a single facility if the installations or devices are at a single site. Any vessel used to transfer production from an offshore facility is part of the facility while it is physically attached to the facility.

* * * * *

■ 3. In § 250.198, in the table in paragraph (e), the following changes are made:

■ A. Add entries in alphanumeric order for API RP 2FPS, API RP 2RD, API RP 2SK, API RP 2SM, API RP 2T, API RP 14J, API Spec 17J, and AWS D3.6M:1999 as set forth below;

■ B. Revise entries for ACI Standard 318–95, ACI 357R–84, AISC Standard Specification for Structural Steel Buildings, API RP 2A–WSD, ASTM Standard C 33–99a, ASTM Standard C 94/C 94M–99, ASTM Standard C 150–99, ASTM Standard C 330–99, ASTM Standard C 595–98, AWS D1.1–96, AWS D1.4–79, NACE Standard MR0175–99 and NACE Standard RP 01–76–94.

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of documents	Incorporated by reference at
ACI Standard 318–95, Building Code Requirements for Reinforced Concrete, plus Commentary on Building Code Requirements for Reinforced Concrete (ACI 318R–95).	§ 250.901(a)(1)
ACI 357R–84, Guide for the Design and Construction of Fixed Offshore Concrete Structures, 1984.	§ 250.901(a)(2)
AISC Standard Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design, June 1, 1989, with Commentary.	§ 250.901(a)(3)
*	*
*	*
*	*
*	*
API RP 2A–WSD, Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms—Working Stress Design; Twenty-first Edition, December 2000, API Order No. G2AWS.	§ 250.901(a)(4); § 250.908(a); § 250.920(a)(b)(c)(e)

Title of documents				Incorporated by reference at		
				*	*	*
API RP 2FPS, Recommended Practice for Planning, Designing, and Constructing Floating Production Systems, First Edition, March 2001, API Order No. G2FPS1.				§ 250.901(a)(5)		
API RP 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs), First Edition, June 1998, API Order No. G02RD1.				§ 250.800(b); § 250.901(a)(6); § 250.1002(b)(5)		
API RP 2SK, Recommended Practice for Design and Analysis of Stationkeeping Systems for Floating Structures, Second Edition, December 1996, Effective Date: March 1, 1997, API Order No. G02SK2.				§ 250.800(b); § 250.901(a)(7)		
API RP 2SM, Recommended Practice for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring, First Edition, March 2001, API Order No. G02SM1.				§ 250.901(a)(8)		
API RP 2T, Planning, Designing and Constructing Tension Leg Platforms, Second Edition, August 1997, API Order No. G02T02.				§ 250.901(a)(9)		
				*	*	*
API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, Second Edition, May 2001, API Order No. G14J02.				§ 250.800(b); § 250.901(a)(10)		
				*	*	*
API Spec 17J, Specification for Unbonded Flexible Pipe, Second Edition, November 1999, including errata (May 25, 2001) and Addendum 1 (June 2003), Effective Date: December 2002, API Order No. G17J02.				§ 250.803(b)(2)(iii); § 250.1002(b)(4); § 250.1007(a)(4)		
				*	*	*
ASTM Standard C 33–99a, Standard Specification for Concrete Aggregates.				§ 250.901(a)(11)		
ASTM Standard C 94/C 94M–99, Standard Specification for Ready-Mixed Concrete.				§ 250.901(a)(12)		
ASTM Standard C 150–99, Standard Specification for Portland Cement				§ 250.901(a)(13)		
ASTM Standard C 330–99, Standard Specification for Lightweight Aggregates for Structural Concrete.				§ 250.901(a)(14)		
ASTM Standard C 595–98, Standard Specification for Blended Hydraulic Cements.				§ 250.901(a)(15)		
AWS D1.1–96, Structural Welding Code—Steel, 1996, including Commentary.				§ 250.901(a)(16)		
AWS D1.4–79, Structural Welding Code—Reinforcing Steel, 1979				§ 250.901(a)(17)		
AWS D3.6M:1999, Specification for Underwater Welding				§ 250.901(a)(18)		
NACE Standard MR0175–99, Sulfide Stress Cracking Resistant Metallic Materials for Oilfield Equipment, Revised January 1999, NACE Item No. 21302.				§ 250.901(a)(19)		
NACE Standard RP 01–76–94, Standard Recommended Practice, Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production.				§ 250.901(a)(20)		

■ 4. In § 250.199, in paragraph (e), the heading of the first column, and the first column in paragraph (e)(8) are revised to read as follows:

§ 250.199 Paperwork Reduction Act statements—information collection.

* * * * *

(e) * * *

30 CFR 250 subpart/title (OMB control number)	Reasons for collecting information and how used					
	*	*	*	*	*	*
(8) Subpart I, Platforms and Structures (1010–0149).						
	*	*	*	*	*	*

■ 5. In § 250.800, the existing text is redesignated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 250.800 General requirements.

* * * * *

(b) For all new floating production systems (FPSs) (e.g., column-stabilized-

units (CSUs); floating production, storage and offloading facilities (FPSOs); tension-leg platforms (TLPs); spars, etc.), you must do all of the following:

(1) Comply with API RP 14J (incorporated by reference as specified in 30 CFR 250.198);

(2) Meet the drilling and production riser standards of API RP 2RD (incorporated by reference as specified in 30 CFR 250.198);

(3) Design all stationkeeping systems for floating facilities to meet the standards of API RP 2SK (incorporated by reference as specified in 30 CFR

250.198), as well as relevant U.S. Coast Guard regulations; and

(4) Design stationkeeping systems for floating facilities to meet structural requirements in subpart I, §§ 250.900 through 250.921 of this part.

■ 6. In § 250.803, paragraph (a) is revised and paragraph (b)(2)(iii) is added to read as follows:

§ 250.803 Additional production system requirements.

(a) For all production platforms, you must comply with the following production safety system requirements, in addition to the requirements of § 250.802 of this subpart and the requirements of API RP 14C (incorporated by reference as specified in 30 CFR 250.198).

(b) * * *

(2) * * *

(iii) If you are installing flowlines constructed of unbonded flexible pipe on a floating platform, you must:

(A) Review the manufacturer's Design Methodology Verification Report and the independent verification agent's (IVA's) certificate for the design methodology contained in that report to ensure that the manufacturer has complied with the requirements of API Spec 17J (incorporated by reference as specified in 30 CFR 250.198);

(B) Determine that the unbonded flexible pipe is suitable for its intended purpose on the lease or pipeline right-of-way;

(C) Submit to the MMS District Supervisor the manufacturer's design specifications for the unbonded flexible pipe; and

(D) Submit to the MMS District Supervisor a statement certifying that the pipe is suitable for its intended use and that the manufacturer has complied with the IVA requirements of API Spec 17J (incorporated by reference as specified in 30 CFR 250.198).

* * * * *

■ 7. Subpart I is revised to read as follows:

Subpart I—Platforms and Structures

General Requirements for Platforms

Sec.

250.900 What general requirements apply to all platforms?

250.901 What industry standards must your platform meet?

250.902 What are the requirements for platform removal and location clearance?

250.903 What records must I keep?

Platform Approval Program

250.904 What is the Platform Approval Program?

250.905 How do I get approval for the installation, modification, or repair of my platform?

250.906 What must I do to obtain approval for the proposed site of my platform?

250.907 Where must I locate foundation boreholes?

250.908 What are the minimum structural fatigue design requirements?

Platform Verification Program

250.909 What is the Platform Verification Program?

250.910 Which of my facilities are subject to the Platform Verification Program?

250.911 If my platform is subject to the Platform Verification Program, what must I do?

250.912 What plans must I submit under the Platform Verification Program?

250.913 When must I resubmit Platform Verification Program plans?

250.914 How do I nominate a CVA?

250.915 What are the CVA's primary responsibilities?

250.916 What are the CVA's primary duties during the design phase?

250.917 What are the CVA's primary duties during the fabrication phase?

250.918 What are the CVA's primary duties during the installation phase?

Inspection, Maintenance, and Assessment of Platforms

250.919 What in-service inspection requirements must I meet?

250.920 What are the MMS requirements for assessment of platforms?

250.921 How do I analyze my platform for cumulative fatigue?

Subpart I—Platforms and Structures

General Requirements for Platforms

§ 250.900 What general requirements apply to all platforms?

(a) You design, fabricate, install, use, maintain, inspect, and assess all platforms and related structures on the Outer Continental Shelf (OCS) so as to ensure their structural integrity for the safe conduct of drilling, workover, and production operations. In doing this, you must consider the specific environmental conditions at the platform location.

(b) You must also submit an application under § 250.905 of this subpart and obtain the approval of the Regional Supervisor before performing any of the activities described in the following table:

Activity requiring application and approval	Conditions for conducting the activity
(1) Install a platform. This includes placing a newly constructed platform at a location or moving an existing platform to a new site.	(i) You must adhere to the requirements of this subpart, including the industry standards in § 250.901. (ii) If you are installing a floating platform, you must also adhere to U.S. Coast Guard (USCG) regulations for the fabrication, installation, and inspection of floating OCS facilities.
(2) Major modification to any platform. This includes any structural changes that materially alter the approval plan or cause a major deviation from approved operations and any modification that increases loading on a platform by 10 percent or more.	(i) You must adhere to the requirements of this subpart, including the industry standards in § 250.901. (ii) Before you make a major modification to a floating platform, you must obtain approval from both the MMS and the USCG for the modification.
(3) Major repair of damage to any platform. This includes any corrective operations involving structural members affecting the structural integrity of a portion or all of the platform.	(i) You must adhere to the requirements of this subpart, including the industry standards in § 250.901. (ii) Before you make a major repair to a floating platform, you must obtain approval from both the MMS and the USCG for the repair.
(4) Convert an existing platform at the current location for a new purpose.	(i) The Regional Supervisor will determine on a case-by-case basis the requirements for an application for conversion of an existing platform at the current location. (ii) At a minimum, your application must include: the converted platform's intended use; and a demonstration of the adequacy of the design and structural condition of the converted platform. (iii) If a floating platform, you must also adhere to USCG regulations for the fabrication, installation, and inspection of floating OCS facilities.

Activity requiring application and approval	Conditions for conducting the activity
(5) Convert an existing mobile offshore drilling unit (MODU) for a new purpose.	(i) The Regional Supervisor will determine on a case-by-case basis the requirements for an application for conversion of an existing MODU. (ii) At a minimum, your application must include: the converted MODU's intended location and use; a demonstration of the adequacy of the design and structural condition of the converted MODU; and a demonstration that the level of safety for the converted MODU is at least equal to that of re-used platforms. (iii) You must also adhere to USCG regulations for the fabrication, installation, and inspection of floating OCS facilities.

(c) Under emergency conditions, you may make repairs to primary structural elements to restore an existing permitted condition without an application or prior approval. You must notify the Regional Supervisor of the damage that occurred within 24 hours, and you must notify the Regional Supervisor of the repairs that were made within 24 hours of completing the repairs. If you make emergency repairs on a floating platform, you must also notify the USCG.

(d) You must determine if your new platform or major modification to an existing platform is subject to the Platform Verification Program (PVP). Section 250.910 of this subpart fully describes the facilities that are subject to the PVP. If you determine that your platform is subject to the PVP, you must follow the requirements of §§ 250.909–250.918 of this subpart.

(e) MMS will cancel your approved platform installation permits one year after the approval is granted if the platform is not installed. If MMS cancels your permit approval, you must resubmit your application.

§ 250.901 What industry standards must your platform meet?

(a) In addition to the other requirements of this subpart, your plans for platform design, analysis, fabrication, installation, use, maintenance, inspection and assessment must, as appropriate, conform to:

(1) American Concrete Institute (ACI) Standard 318, Building Code Requirements for Reinforced Concrete, plus Commentary, (incorporated by reference as specified in § 250.198);

(2) ACI 357R, Guide for the Design and Construction of Fixed Offshore Concrete Structures, (incorporated by reference as specified in § 250.198);

(3) American Institute of Steel Construction (AISC) Standard Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design, with Commentary, (incorporated by reference as specified in § 250.198);

(4) American Petroleum Institute (API) Recommended Practice (RP) 2A—WSD, Recommended Practice for Planning, Designing, and Constructing Fixed Offshore Platforms—Working Stress Design, (incorporated by reference as specified in § 250.198);

(5) API RP 2FPS, Recommended Practice for Planning, Designing, and Constructing Floating Production Systems, (incorporated by reference as specified in § 250.198);

(6) API RP 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs), (incorporated by reference as specified in § 250.198);

(7) API RP 2SK, Recommended Practice for Design and Analysis of Station Keeping Systems for Floating Structures, (incorporated by reference as specified in § 250.198);

(8) API RP 2SM, Recommended Practice for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring, (incorporated by reference as specified in § 250.198);

(9) API RP 2T, Recommended Practice for Planning, Designing and Constructing Tension Leg Platforms, (incorporated by reference as specified in § 250.198);

(10) API RP 14J, Recommended Practice for Design and Hazards Analysis for Offshore Production Facilities, (incorporated by reference as specified in § 250.198);

(11) American Society for Testing and Materials (ASTM) Standard C 33–99a, Standard Specification for Concrete Aggregates, (incorporated by reference as specified in § 250.198);

(12) ASTM Standard C 94/C 94M–99, Standard Specification for Ready-Mixed Concrete, (incorporated by reference as specified in § 250.198);

(13) ASTM Standard C 150–99, Standard Specification for Portland Cement, (incorporated by reference as specified in § 250.198);

(14) ASTM Standard C 330–99, Standard Specification for Lightweight

Aggregates for Structural Concrete, (incorporated by reference as specified in § 250.198);

(15) ASTM Standard C 595–98, Standard Specification for Blended Hydraulic Cements, (incorporated by reference as specified in § 250.198);

(16) AWS D1.1, Structural Welding Code—Steel, including Commentary, (incorporated by reference as specified in § 250.198);

(17) AWS D1.4, Structural Welding Code—Reinforcing Steel, (incorporated by reference as specified in § 250.198);

(18) AWS D3.6M, Specification for Underwater Welding, (incorporated by reference as specified in § 250.198);

(19) NACE Standard MR0175, Sulfide Stress Cracking Resistant Metallic Materials for Oilfield Equipment, (incorporated by reference as specified in § 250.198);

(20) NACE Standard RP 01–76–94, Standard RP, Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production, (incorporated by reference as specified in § 250.198).

(b) You must follow the requirements contained in the documents listed under paragraph (a) of this section insofar as they do not conflict with other provisions of 30 CFR Part 250. You may use applicable provisions of these documents, as approved by the Regional Supervisor, for the design, fabrication, and installation of platforms such as spars, since standards specifically written for such structures do not exist. You may also use alternative codes, rules, or standards, as approved by the Regional Supervisor, under the conditions enumerated in § 250.141.

(c) For information on the standards mentioned in this section, and where they may be obtained, see § 250.198 of this part.

(d) The following chart summarizes the applicability of the industry standards listed in this section for fixed and floating platforms:

Industry standard	Applicable to . . .
ACI Standard 318, Building Code Requirements for Reinforced Concrete, Plus Commentary;	Fixed and floating platform, as appropriate.

Industry standard	Applicable to . . .
AISC Standard Specification for Structural Steel Buildings, Allowable Stress Design and Plastic Design; ASTM Standard C33-99a, Standard Specification for Concrete Aggregates; ASTM Standard C94/C94M-99, Standard Specification for Ready-Mixed Concrete; ASTM Standard C150-99, Standard Specification for Portland Cement; ASTM Standard C330-99, Standard Specification for Lightweight Aggregates for Structural Concrete; ASTM Standard C 595-98, Standard Specification for Blended Hydraulic Cements; AWS D1.1, Structural Welding Code—Steel; AWS D1.4, Structural Welding Code—Reinforcing Steel; AWS D3.6M, Specification for Underwater Welding; NACE Standard RP 01-76-94, Standard Recommended Practice (RP), Corrosion Control of Steel Fixed Offshore Platforms Associated with Petroleum Production; API RP 2A—WSD, RP for Planning, Designing, and Constructing Fixed Offshore Platforms—Working Stress Design; ACI357R, Guide for the Design and Construction of Fixed Offshore Concrete Structures; API RP 14J, RP for Design and Hazards Analysis for Offshore Production Facilities; API RP 2FPS, RP for Planning, Designing, and Constructing, Floating Production Systems; API RP 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs);. API RP 2SK, RP for Design and Analysis of Station Keeping Systems for Floating Structures; API RP 2T, RP for Planning, Designing, and Constructing Tension Leg Platforms; API RP 2SM, RP for Design, Manufacture, Installation, and Maintenance of Synthetic Fiber Ropes for Offshore Mooring.	Fixed platforms. Floating platforms.

§ 250.902 What are the requirements for platform removal and location clearance?

You must remove all structures according to §§ 250.1725 through 250.1730 of Subpart Q—Decommissioning Activities of this part.

§ 250.903 What records must I keep?

(a) You must compile, retain, and make available to MMS representatives for the functional life of all platforms:

- (1) The as-built drawings;
- (2) The design assumptions and analyses;
- (3) A summary of the fabrication and installation nondestructive examination records;

(4) The inspection results from the inspections required by § 250.919 of this subpart; and

(5) Records of repairs not covered in the inspection report submitted under § 250.919(b).

(b) You must record and retain the original material test results of all primary structural materials during all

stages of construction. Primary material is material that, should it fail, would lead to a significant reduction in platform safety, structural reliability, or operating capabilities. Items such as steel brackets, deck stiffeners and secondary braces or beams would not generally be considered primary structural members (or materials).

(c) You must provide MMS with the location of these records in the certification statement of your application for platform approval as required in § 250.905(j).

Platform Approval Program

§ 250.904 What is the Platform Approval Program?

(a) The Platform Approval Program is the MMS basic approval process for platforms on the OCS. The requirements of the Platform Approval Program are described in §§ 250.904 through 250.908 of this subpart. Completing these requirements will satisfy MMS criteria

for approval of fixed platforms of a proven design that will be placed in the shallow water areas (≤ 400 ft.) of the Gulf of Mexico OCS.

(b) The requirements of the Platform Approval Program must be met by all platforms on the OCS. Additionally, if you want approval for a floating platform; a platform of unique design; or a platform being installed in deepwater (> 400 ft.) or a frontier area, you must also meet the requirements of the Platform Verification Program. The requirements of the Platform Verification Program are described in §§ 250.909 through 250.918 of this subpart.

§ 250.905 How do I get approval for the installation, modification, or repair of my platform?

The Platform Approval Program requires that you submit the environmental and structural information in the following table for your proposed project.

Required documents	Required contents	Other requirements
(a) Application cover letter	Proposed structure designation, lease number, area, name, and block number, and the type of facility your facility (<i>e.g.</i> , drilling, production, quarters). The structure designation must be unique for the field (some fields are made up of several blocks); <i>i.e.</i> once a platform "A" has been used in the field there should never be another platform "A" even if the old platform "A" has been removed. Single well free standing caissons should be given the same designation as the well. All other structures are to be designated by letter designations.	You must submit three copies. If, your facility is subject to the Platform Verification Program (PVP), you must submit four copies.
(b) Location plat	Latitude and longitude coordinates, Universal Mercator grid-system coordinates, state plane coordinates in the Lambert or Transverse Mercator Projection System, and distances in feet from the nearest block lines. These coordinates must be based on the NAD (North American Datum) 27 datum plane coordinate system.	Your plat must be drawn to a scale of 1 inch equals 2,000 feet and include the coordinates of the lease block boundary lines. You must submit three

Required documents	Required contents	Other requirements
(c) Front, Side, and Plan View drawings.	Platform dimensions and orientation, elevations relative to M.L.L.W. (Mean Lower Low Water), and pile sizes and penetration.	Your drawing sizes must not exceed 11" × 17". You must submit three copies (four copies for PVP applications).
(d) Complete set of structural drawings.	The approved for construction fabrication drawings should be submitted including; e.g. cathodic protection systems; jacket design; pile foundations; drilling, production, and pipeline risers and riser tensioning systems; turrets and turret-and-hull interfaces; mooring and tethering systems; foundations and anchoring systems.	Your drawing sizes must not exceed 11" × 17". You must submit one copy.
(e) Summary of environmental data.	A summary of the environmental data described in the applicable standards referenced under § 250.901(a) of this subpart and in § 250.198 of Subpart A, where the data is used in the design or analysis of the platform. Examples of relevant data include information on waves, wind, current, tides, temperature, snow and ice effects, marine growth, and water depth.	You must submit one copy.
(f) Summary of the engineering design data.	Loading information (e.g., live, dead, environmental), structural information (e.g., design-life; material types; cathodic protection systems; design criteria; fatigue life; jacket design; deck design; production component design; pile foundations; drilling, production, and pipeline risers and riser tensioning systems; turrets and turret-and-hull interfaces; foundations, foundation pilings and templates, and anchoring systems; mooring or tethering systems; fabrication and installation guidelines), and foundation information (e.g., soil stability, design criteria).	You must submit one copy.
(g) Project-specific studies used in the platform design or installation.	All studies pertinent to platform design or installation, e.g., oceanographic and/or soil reports including the overall site investigative report required in section 250.906.	You must submit one copy of each study.
(h) Description of the loads imposed on the facility.	Loads imposed by jacket; decks; production components; drilling, production, and pipeline risers, and riser tensioning systems; turrets and turret-and-hull interfaces; foundations, foundation pilings and templates, and anchoring systems; and mooring or tethering systems.	You must submit one copy.
(i) A copy of the in-service inspection plan.	This plan is described in § 250.919.	You must submit one copy.
(j) Certification statement	The following statement: "The design of this structure has been certified by a recognized classification society, or a registered civil or structural engineer or equivalent, or a naval architect or marine engineer or equivalent, specializing in the design of offshore structures. The certified design and as-built plans and specifications will be on file at (give location)".	An authorized company representative must sign the statement. You must submit one copy.

§ 250.906 What must I do to obtain approval for the proposed site of my platform?

(a) *Shallow hazards surveys.* You must perform a high-resolution or acoustic-profiling survey to obtain information on the conditions existing at and near the surface of the seafloor. You must collect information through this survey sufficient to determine the presence of the following features and their likely effects on your proposed platform:

- (1) Shallow faults;
- (2) Gas seeps or shallow gas;
- (3) Slump blocks or slump sediments;
- (4) Shallow water flows;
- (5) Hydrates; or
- (6) Ice scour of seafloor sediments.

(b) *Geologic surveys.* You must perform a geological survey relevant to the design and siting of your platform. Your geological survey must assess:

- (1) Seismic activity at your proposed site;
- (2) Fault zones, the extent and geometry of faulting, and attenuation effects of geologic conditions near your site; and

(3) For platforms located in producing areas, the possibility and effects of seafloor subsidence.

(c) *Subsurface surveys.* Depending upon the design and location of your proposed platform and the results of the shallow hazard and geologic surveys, the Regional Supervisor may require you to perform a subsurface survey. This survey will include a testing program for investigating the stratigraphic and engineering properties of the soil that may affect the foundations or anchoring systems for your facility. The testing program must include adequate in situ testing, boring, and sampling to examine all important soil and rock strata to determine its strength classification, deformation properties, and dynamic characteristics. If required to perform a subsurface survey, you must prepare and submit to the Regional Supervisor a summary report to briefly describe the results of your soil testing program, the various field and laboratory test methods employed, and the applicability of these methods as they pertain to the quality of the samples, the type of soil, and the anticipated design application. You

must explain how the engineering properties of each soil stratum affect the design of your platform. In your explanation you must describe the uncertainties inherent in your overall testing program, and the reliability and applicability of each test method.

(d) *Overall site investigation report.* You must prepare and submit to the Regional Supervisor an overall site investigation report for your platform that integrates the findings of your shallow hazards surveys and geologic surveys, and, if required, your subsurface surveys. Your overall site investigation report must include analyses of the potential for:

- (1) Scouring of the seafloor;
- (2) Hydraulic instability;
- (3) The occurrence of sand waves;
- (4) Instability of slopes at the platform location;
- (5) Liquefaction, or possible reduction of soil strength due to increased pore pressures;
- (6) Degradation of subsea permafrost layers;
- (7) Cyclic loading;
- (8) Lateral loading;
- (9) Dynamic loading;
- (10) Settlements and displacements;

(11) Plastic deformation and formation collapse mechanisms; and
 (12) Soil reactions on the platform foundations or anchoring systems.

§ 250.907 Where must I locate foundation boreholes?

(a) For fixed or bottom-founded platforms and tension leg platforms, your maximum distance from any foundation pile to a soil boring must not exceed 500 feet.

(b) For deepwater floating platforms which utilize catenary or taut-leg

moorings, you must take borings at the most heavily loaded anchor location, at the anchor points approximately 120 and 240 degrees around the anchor pattern from that boring, and, as necessary, other points throughout the anchor pattern to establish the soil profile suitable for foundation design purposes.

§ 250.908 What are the minimum structural fatigue design requirements?

(a) API RP 2A-WSD, Recommended Practice for Planning, Designing and

Constructing Fixed Offshore Platforms (incorporated by reference as specified in 30 CFR 250.198), requires that the design fatigue life of each joint and member be twice the intended service life of the structure. When designing your platform, the following table provides minimum fatigue life safety factors for critical structural members and joints.

If . . .	Then . . .
(1) There is sufficient structural redundancy to prevent catastrophic failure of the platform or structure under consideration.	The results of the analysis must indicate a maximum calculated life of twice the design life of the platform.
(2) There is not sufficient structural redundancy to prevent catastrophic failure of the platform or structure.	The results of a fatigue analysis must indicate a minimum calculated life or three times the design life of the platform.
(3) The desirable degree of redundancy is significantly reduced as a result of fatigue damage.	The results of a fatigue analysis must indicate a minimum calculated life of three times the design life of the platform.

(b) The documents incorporated by reference in § 250.901 may require larger safety factors than indicated in paragraph (a) of this section for some key components. When the documents incorporated by reference require a larger safety factor than the chart in paragraph (a) of this section, the requirements of the incorporated document will prevail.

Platform Verification Program

§ 250.909 What is the Platform Verification Program?

The Platform Verification Program is the MMS approval process for ensuring that floating platforms; platforms of a new or unique design; platforms in

seismic areas; or platforms located in deepwater or frontier areas meet stringent requirements for design and construction. The program is applied during construction of new platforms and major modifications of, or repairs to, existing platforms. These requirements are in addition to the requirements of the Platform Approval Program described in §§ 250.904 through 250.908 of this subpart.

§ 250.910 Which of my facilities are subject to the Platform Verification Program?

(a) All new fixed or bottom-founded platforms that meet any of the following

five conditions are subject to the Platform Verification Program:

(1) Platforms installed in water depths exceeding 400 feet (122 meters);

(2) Platforms having natural periods in excess of 3 seconds;

(3) Platforms installed in areas of unstable bottom conditions;

(4) Platforms having configurations and designs which have not previously been used or proven for use in the area; or

(5) Platforms installed in seismically active areas.

(b) All new floating platforms are subject to the Platform Verification Program to the extent indicated in the following table:

If . . .	Then . . .
(1) Your new floating platform is a buoyant offshore facility that does not have a ship-shaped hull.	The entire platform is subject to the Platform Verification Program including the following associated structures: (i) Drilling, production, and pipeline risers, and riser tensioning systems (each platform must be designed to accommodate all the loads imposed by all risers and riser does not have tensioning systems); (ii) Turrets and turret-and-hull interfaces; (iii) Foundations, foundation pilings and templates, and anchoring systems; and (iv) Mooring or tethering systems.
(2) Your new floating platform is a buoyant offshore facility with a ship-shaped hull.	Only the following structures that may be associated with a floating platform are subject to the Platform Verification Program: (i) Drilling, production, and pipeline risers, and riser tensioning systems (each platform must be designed to accommodate all the loads imposed by all risers and riser a ship-shaped tensioning systems); (ii) Turrets and turret-and-hull interfaces; (iii) Foundations, foundation pilings and templates, and anchoring systems; and (iv) Mooring or tethering systems.

(c) If a platform is originally subject to the Platform Verification Program, then the conversion of that platform at that same site for a new purpose, or making a major modification of, or

major repair to, that platform, is also subject to the Platform Verification Program. A major modification includes any modification that increases loading on a platform by 10 percent or more. A

major repair is a corrective operation involving structural members affecting the structural integrity of a portion or all of the platform. Before you make a major modification or repair to a

floating platform, you must obtain approval from both the MMS and the USCG.

(d) The applicability of Platform Verification Program requirements to other types of facilities will be determined by MMS on a case-by-case basis.

§ 250.911 If my platform is subject to the Platform Verification Program, what must I do?

If your platform, conversion, or major modification or repair meets the criteria in § 250.910, you must:

(a) Design, fabricate, install, use, maintain and inspect your platform, conversion, or major modification or repair to your platform according to the requirements of this subpart, and the applicable documents listed in § 250.901(a) of this subpart;

(b) Comply with all the requirements of the Platform Approval Program found in §§ 250.904 through 250.908 of this subpart.

(c) Submit for the Regional Supervisor's approval three copies each of the design verification, fabrication verification, and installation verification plans required by § 250.912;

(d) Include your nomination of a Certified Verification Agent (CVA) as a part of each verification plan required by § 250.912;

(e) Follow the additional requirements in §§ 250.913 through 250.918;

(f) Obtain approval for modifications to approved plans and for major deviations from approved installation procedures from the Regional Supervisor; and

(g) Comply with applicable USCG regulations for floating OCS facilities.

§ 250.912 What plans must I submit under the Platform Verification Program?

If your platform, associated structure, or major modification meets the criteria in § 250.910, you must submit the following plans to the Regional Supervisor for approval:

(a) *Design verification plan.* You may submit your design verification plan with or subsequent to the submittal of your Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD). Your design verification must be conducted by, or be under the direct supervision of, a registered professional civil or structural engineer or equivalent, or a naval architect or marine engineer or equivalent, with previous experience in directing the design of similar facilities, systems, structures, or equipment. For floating platforms, you must ensure that the requirements of the USCG for

structural integrity and stability, e.g., verification of center of gravity, etc., have been met. Your design verification plan must include the following:

(1) All design documentation specified in § 250.905 of this subpart;

(2) Abstracts of the computer programs used in the design process; and

(3) A summary of the major design considerations and the approach to be used to verify the validity of these design considerations.

(b) *Fabrication verification plan.* The Regional Supervisor must approve your fabrication verification plan before you may initiate any related operations. Your fabrication verification plan must include the following:

(1) Fabrication drawings and material specifications for artificial island structures and major members of concrete-gravity and steel-gravity structures;

(2) For jacket and floating structures, all the primary load-bearing members included in the space-frame analysis; and

(3) A summary description of the following:

(i) Structural tolerances;
(ii) Welding procedures;
(iii) Material (concrete, gravel, or silt) placement methods;
(iv) Fabrication standards;
(v) Material quality-control procedures;

(vi) Methods and extent of nondestructive examinations for welds and materials; and

(vii) Quality assurance procedures.

(c) *Installation verification plan.* The Regional Supervisor must approve your installation verification plan before you may initiate any related operations. Your installation verification plan must include:

(1) A summary description of the planned marine operations;
(2) Contingencies considered;
(3) Alternative courses of action; and
(4) An identification of the areas to be inspected. You must specify the acceptance and rejection criteria to be used for any inspections conducted during installation, and for the post-installation verification inspection.

(d) You must combine fabrication verification and installation verification plans for manmade islands or platforms fabricated and installed in place.

§ 250.913 When must I resubmit Platform Verification Program plans?

(a) You must resubmit any design verification, fabrication verification, or installation verification plan to the Regional Supervisor for approval if:

(1) The CVA changes;

(2) The CVA's or assigned personnel's qualifications change; or

(3) The level of work to be performed changes.

(b) If only part of a verification plan is affected by one of the changes described in paragraph (a) of this section, you can resubmit only the affected part. You do not have to resubmit the summary of technical details unless you make changes in the technical details.

§ 250.914 How do I nominate a CVA?

(a) As part of your design verification, fabrication verification, or installation verification plan, you must nominate a CVA for the Regional Supervisor's approval. You must specify whether the nomination is for the design, fabrication, or installation phase of verification, or for any combination of these phases.

(b) For each CVA, you must submit a list of documents to be forwarded to the CVA, and a qualification statement that includes the following:

(1) Previous experience in third-party verification or experience in the design, fabrication, installation, or major modification of offshore oil and gas platforms. This should include fixed platforms, floating platforms, manmade islands, other similar marine structures, and related systems and equipment;

(2) Technical capabilities of the individual or the primary staff for the specific project;

(3) Size and type of organization or corporation;

(4) In-house availability of, or access to, appropriate technology. This should include computer programs, hardware, and testing materials and equipment;

(5) Ability to perform the CVA functions for the specific project considering current commitments;

(6) Previous experience with MMS requirements and procedures;

(7) The level of work to be performed by the CVA.

§ 250.915 What are the CVA's primary responsibilities?

(a) The CVA must conduct specified reviews according to §§ 250.916, 250.917, and 250.918 of this subpart.

(b) Individuals or organizations acting as CVAs must not function in any capacity that would create a conflict of interest, or the appearance of a conflict of interest.

(c) The CVA must consider the applicable provisions of the documents listed in § 250.901(a); the alternative codes, rules, and standards approved under 250.901(b); and the requirements of this subpart.

(d) The CVA is the primary contact with the Regional Supervisor and is

directly responsible for providing immediate reports of all incidents that affect the design, fabrication and installation of the platform.

§ 250.916 What are the CVA's primary duties during the design phase?

(a) The CVA must use good engineering judgement and practices in conducting an independent assessment of the design of the platform, major modification, or repair. The CVA must ensure that the platform, major

modification, or repair is designed to withstand the environmental and functional load conditions appropriate for the intended service life at the proposed location.

(b) Primary duties of the CVA during the design phase include the following:

Type of facility . . .	The CVA must . . .
(1) For fixed platforms and non-ship-shaped floating facilities	Conduct an independent assessment of all proposed: (i) Planning criteria; (ii) Operational requirements; (iii) Environmental loading data; (iv) Load determinations; (v) Stress analyses; (vi) Material designations; (vii) Soil and foundation conditions; (viii) Safety factors; and (ix) Other pertinent parameters of the proposed design.
(2) For all floating facilities	Ensure that the requirements of the U.S. Coast Guard for structural integrity and stability, <i>e.g.</i> , verification of center of gravity, etc., have been met. The CVA must also consider: (i) Drilling, production, and pipeline risers, and riser tensioning systems; (ii) Turrets and turret-and-hull interfaces; (iii) Foundations, foundation pilings and templates, and anchoring systems; and (iv) Mooring or tethering systems.

(c) The CVA must submit interim reports to the Regional Supervisor and to you, as appropriate. The CVA, upon completion of the design verification, must prepare a final report and submit one copy to the Regional Supervisor. The CVA must submit the final report within 90 days of the receipt of the design data, or within 90 days from the date the approval to act as a CVA was issued, whichever is later. The CVA must submit the final report to the Regional Supervisor before fabrication begins, and must include:

(1) A summary of the material reviewed and the CVA's findings;
(2) The CVA's recommendation that the Regional Supervisor either accept, request modifications, or reject the proposed design;

(3) The particulars of how, by whom, and when the independent review was conducted; and

(4) Any additional comments the CVA may deem necessary.

§ 250.917 What are the CVA's primary duties during the fabrication phase?

(a) The CVA must use good engineering judgement and practices in

conducting an independent assessment of the fabrication activities. The CVA must monitor the fabrication of the platform or major modification to ensure that it has been built according to the approved design and the fabrication plan. If the CVA finds that fabrication procedures are changed or design specifications are modified, the CVA must inform you. If you accept the modifications, then the CVA must so inform the Regional Supervisor.

(b) Primary duties of the CVA during the fabrication phase include the following:

Type of facility . . .	The CVA must . . .
(1) For all fixed platforms and non-ship-shaped floating facilities	Make periodic onsite inspections while fabrication is in progress and must verify the following fabrication items, as appropriate: (i) Quality control by lessee and builder; (ii) Fabrication site facilities; (iii) Material quality and identification methods; (iv) Fabrication procedures specified in the approved plan, and adherence to such procedures; (v) Welder and welding procedure qualification and identification; (vi) Structural tolerances specified and adherence to those tolerances; (vii) The nondestructive examination requirements, and evaluation results of the specified examinations; (viii) Destructive testing requirements and results; (ix) Repair procedures; (x) Installation of corrosion-protection systems and splash-zone protection; (xi) Erection procedures to ensure that overstressing of structural members does not occur; (xii) Alignment procedures; (xiii) Dimensional check of the overall structure, including any turrets, turret-and-hull interfaces, any mooring line and chain and riser tensioning line segments; and (xiv) Status of quality-control records at various stages of fabrication.

Type of facility . . .	The CVA must . . .
(2) For all floating facilities	Ensure that the requirements of the U.S. Coast Guard floating for structural integrity and stability, <i>e.g.</i> , verification of center of gravity, etc., have been met. The CVA must also consider: (i) Drilling, production, and pipeline risers, and riser tensioning systems (at least for the initial fabrication of these elements); (ii) Turrets and turret-and-hull interfaces; (iii) Foundation pilings and templates, and anchoring systems; and (iv) Mooring or tethering systems.

(c) *Reports.* The CVA must submit interim reports to the Regional Supervisor and to you, as appropriate. The CVA must prepare a final report covering the adequacy of the entire fabrication phase. The final report need not cover aspects of the fabrication already included in interim reports. The CVA must submit one copy of the final report to the Regional Supervisor within 90 days after completion of the fabrication phase but before the

beginning of the installation phase. In the final report the CVA must:
(1) Give details of how, by whom, and when the independent monitoring activities were conducted;
(2) Describe the CVA's activities during the verification process;
(3) Summarize the CVA's findings;
(4) Confirm or deny compliance with the design specifications and the approved fabrication plan;
(5) Make a recommendation to accept or reject the fabrication; and

(6) Provide any additional comments that the CVA deems necessary.

§ 250.918 What are the CVA's primary duties during the installation phase?

(a) The CVA must use good engineering judgment and practice in conducting an independent assessment of the installation activities.

(b) Primary duties of the CVA during the installation phase include the following:

The CVA must . . .	Operation or equipment to be inspected . . .
(1) Verify, as appropriate	(i) Loadout and initial flotation operations; (ii) Towing operations to the specified location, and review the towing records; (iii) Launching and uprighting operations; (iv) Submergence operations; (v) Pile or anchor installations; (vi) Installation of mooring and tethering systems; (vii) Final deck and component installations; and (viii) Installation at the approved location according to the approved design and the installation plan.
(2) Witness (for a fixed or floating platform)	(i) The loadout of the jacket, decks, piles, or structures from each fabrication site; (ii) The actual installation of the platform or major modification and the related installation activities.
(3) Witness (for a floating platform)	(i) The loadout of the platform; (ii) The installation of drilling, production, and pipeline risers, and riser tensioning systems (at least for the initial installation of these elements); (iii) The installation of turrets and turret-and-hull interfaces; (iv) The installation of foundation pilings and templates, and anchoring systems; and (v) The installation of the mooring and tethering systems.
(4) Conduct an onsite survey	Survey the platform after transportation to the approved location.
(5) Spot-check as necessary to determine compliance with the applicable documents listed in § 250.901(a); the alternative codes, rules and standards approved under 250.901(b); the requirements listed in § 250.903 and § 250.906 through 250.908 of this subpart and the approved plans.	(i) Equipment; (ii) Procedures; and (iii) Recordkeeping.

(c) *Reports.* The CVA must submit interim reports to you and the Regional Supervisor, as appropriate. The CVA must prepare a final report covering the adequacy of the entire installation phase, and submit one copy of the final report to the Regional Supervisor within 30 days of the installation of the platform. In the final report, the CVA must:

(1) Give details of how, by whom, and when the independent monitoring activities were conducted;

(2) Describe the CVA's activities during the verification process;
(3) Summarize the CVA's findings;
(4) Write a confirmation or denial of compliance with the approved installation plan;
(5) Provide a recommendation to accept or reject the installation; and
(6) Provide any additional comments that the CVA deems necessary.

Inspection, Maintenance, and Assessment of Platforms

§ 250.919 What in-service inspection requirements must I meet?

(a) You must develop a comprehensive annual in-service inspection plan covering all of your platforms. As a minimum, your plan must address the recommendations of the appropriate documents listed in § 250.901(a). Your plan must specify the type, extent, and frequency of in-place inspections which you will conduct for

both the above water and the below water structure of all platforms, and pertinent components of the mooring systems for floating platforms. The plan must also address how you are monitoring the corrosion protection for both the above water and below water structure.

(b) You must submit a report annually on November 1 to the Regional Supervisor that must include:

(1) A list of fixed or floating platforms inspected in the preceding 12 months;

(2) The extent and area of inspection;

(3) The type of inspection employed, (*i.e.*, visual, magnetic particle, ultrasonic testing); and

(4) A summary of the testing results indicating what repairs, if any, were needed and the overall structural condition of the fixed or floating platform.

§ 250.920 What are the MMS requirements for assessment of platforms?

(a) You must perform a platform assessment when needed, based on the platform assessment initiators listed in sections 17.2.1–17.2.5 of API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design (incorporated by reference as specified in 30 CFR 250.198).

(b) You must initiate mitigation actions for platforms that do not pass the assessment process of API RP 2A–WSD.

(c) You must document all wells, equipment, and pipelines supported by the platform if you intend to use the medium or low consequence of failure exposure category for your assessment. Exposure categories are defined in API RP 2A–WSD Section 1.7.

(d) MMS may require you to conduct a platform assessment where reduced environmental loading criteria are not allowed.

(e) The use of Section 17, Assessment of Existing Platforms, of API RP 2A–WSD, is limited to existing fixed structures that are serving their original approved purpose.

§ 250.921 How do I analyze my platform for cumulative fatigue?

(a) If you are required to analyze cumulative fatigue on your platform because of the results of an inspection or platform assessment, you must ensure that the safety factors for critical elements listed in § 250.908 are met or exceeded.

(b) If the calculated life of a joint or member does not meet the criteria of § 250.908, you must either mitigate the load, strengthen the joint or member, or develop an increased inspection process.

■ 8. In § 250.1002, paragraphs (b)(4) and (b)(5) are added to read as follows:

§ 250.1002 Design requirements for DOI pipelines.

* * * * *

(b) * * *

(4) If you are installing pipelines constructed of unbonded flexible pipe, you must design them according to the standards and procedures of API Spec 17J, incorporated by reference as specified in 30 CFR 250.198.

(5) You must design pipeline risers for tension leg platforms and other floating platforms according to the design standards of API RP 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension Leg Platforms

(TLPs), incorporated by reference as specified in 30 CFR 250.198.

* * * * *

9. In § 250.1007, revise paragraph (a)(4) to read as follows:

§ 250.1007 What to include in applications.

(a) * * *

(4) The application must include a description of any additional design precautions which were taken to enable the pipeline to withstand the effects of water currents, storm or ice scouring, soft bottoms, mudslides, earthquakes, permafrost, and other environmental factors. If your application involves using unbonded flexible pipe, you must:

(i) Review the manufacturer's Design Methodology Verification Report, and the independent verification agent's (IVA's) certificate for the design methodology contained in that report, to ensure that the manufacturer has complied with the requirements of API Spec 17J incorporated by reference as specified in 30 CFR 250.198;

(ii) Determine that the unbonded flexible pipe is suitable for its intended purpose on the lease or pipeline right-of-way;

(iii) Submit to the MMS Regional Supervisor the manufacturer's design specifications for the unbonded flexible pipe; and

(iv) Submit to the MMS Regional Supervisor a statement certifying that the pipe is suitable for its intended use, and that the manufacturer has complied with the IVA requirements of API Spec 17J incorporated by reference as specified in 30 CFR 250.198.

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[FR Doc. 05–14038 Filed 7–18–05; 8:45 am]

BILLING CODE 4310–MR–P



Federal Register

**Tuesday,
July 19, 2005**

Part V

**Department of
Homeland Security**

Transportation Security Administration

**49 CFR Parts 1520, 1540, and 1562
Ronald Reagan Washington National
Airport: Enhanced Security Procedures
for Certain Operations; Interim Final
Rule**

DEPARTMENT OF HOMELAND SECURITY**Transportation Security Administration****49 CFR Parts 1520, 1540, and 1562**

[Docket No. TSA-2005-21866; Amendment Nos. 1520-3, 1540-6, 1562-1]

RIN 1652-AA49

Ronald Reagan Washington National Airport: Enhanced Security Procedures for Certain Operations

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Interim final rule; request for comments.

SUMMARY: Since September 11, 2001, general aviation aircraft operations have been prohibited at Ronald Reagan Washington National Airport (DCA). The Transportation Security Administration (TSA) is issuing this interim final rule (IFR) to restore access to DCA for certain aircraft operations while maintaining the security of critical Federal Government and other assets in the Washington, DC metropolitan area. This IFR applies to all passenger aircraft operations into or out of DCA, except U.S. air carrier operations operating under a full security program required by 49 CFR part 1544 and foreign air carrier operations operating under 49 CFR 1546.101(a) or (b). The IFR establishes security procedures for aircraft operators and gateway airport operators, and security requirements relating to crewmembers, passengers, and armed security officers onboard aircraft operating into or out of DCA. Although this IFR is effective on August 18, 2005, an aircraft operator may not conduct operations into or out of DCA until it is determined by TSA to be in compliance with the security requirements set forth in this IFR.

DATES: This rule is effective August 18, 2005. Submit comments by September 19, 2005.

ADDRESSES: You may submit comments, identified by the TSA docket number to this rulemaking, using any one of the following methods:

Comments Filed Electronically: You may submit comments through the docket Web site at <http://dms.dot.gov>. Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

Comments Submitted by Mail, Fax, or In Person: Address or deliver your written, signed comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001; Fax: 202-493-2251.

Comments that include trade secrets, confidential commercial or financial information, or sensitive security information (SSI) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing trade secrets, confidential commercial or financial information, or SSI should be appropriately marked as containing such information and submitted by mail to the individual(s) listed in **FOR FURTHER INFORMATION CONTACT**.

Reviewing Comments in the Docket: You may review the public docket containing comments on this interim final rule in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office is located on the plaza level of the NASSIF Building at the Department of Transportation address above. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: For policy questions, Robert Rottman, Office of Aviation Security Policy, Transportation Security Administration Headquarters, East Building, Floor 3, 601 12th Street, Arlington, VA 22202; telephone: (571) 227-2289; e-mail: Robert.Rottman@dhs.gov.

For questions related to Sensitive Security Information (SSI), Keith L. Moore, Director, SSI Program Office, Office of the Chief of Staff, Transportation Security Administration Headquarters, East Building, Floor 7, 601 12th Street, Arlington, VA 22202; telephone: (571) 227-3513; e-mail: Keith.Moore1@dhs.gov.

For legal questions, Scott Houston, Office of Chief Counsel, Transportation Security Administration Headquarters, East Building, Floor 12, 601 12th Street, Arlington, VA 22202; telephone: (571) 227-3653; e-mail: Scott.Houston@dhs.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

This IFR is being adopted without prior notice and prior public comment. However, to the maximum extent possible, operating components within DHS provide an opportunity for public comment on regulations issued without prior notice. Accordingly, TSA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. TSA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from this rulemaking. See **ADDRESSES** above for information on where to submit comments.

Comments that include trade secrets, confidential commercial or financial information, or SSI should not be submitted to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing this type of information should be appropriately marked and submitted by mail to the individual(s) listed in **FOR FURTHER INFORMATION CONTACT** section. Upon receipt of such comments, TSA will not place the comments in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold them in a separate file to which the public does not have access, and place a note in the public docket that TSA has received such materials from the commenter. If TSA receives a request to examine or copy this information, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's FOIA regulation found in 6 CFR part 5.

With each comment, please include your name and address, identify the docket number at the beginning of your comments, and give the reason for each comment. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. You may submit comments and material electronically, in person, by mail, or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in two copies, in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you want TSA to acknowledge receipt of your comments on this rulemaking, include with your comments a self-addressed, stamped postcard on which the docket number

appears. We will stamp the date on the postcard and mail it to you.

Except for comments containing confidential information and SSI, we will file in the public docket all comments we receive, as well as a report summarizing each substantive public contact with TSA personnel concerning this rulemaking. The docket is available for public inspection before and after the comment closing date.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late to the extent practicable. We may change this rule in light of the comments we receive.

Availability of Rulemaking Document

You may obtain an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search/>);

(2) Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>; or

(3) Visiting the TSA's Law and Policy Web page at <http://www.tsa.gov/public/index.jsp>.

In addition, copies are available by writing or calling any of the individuals in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information or advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You can get further information regarding SBREFA on the Small Business Administration's Web page at http://www.sba.gov/advo/laws/law_lib.html.

Good Cause for Issuing Rule Without Prior Notice and Comment

TSA is issuing this IFR without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes the agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

General aviation and charter operations that are not under full

security programs have been prohibited from arriving at or departing from DCA since September 11, 2001. However, regularly scheduled, commercial air carrier operations that had been prohibited at DCA after September 11, 2001, have been restored through issuance of Notices to Airmen (NOTAMs) by the Federal Aviation Administration (FAA). The operators that have not been able to resume flights into and out of DCA have suffered economic hardship. Because the interim final rule establishes a voluntary program that will lift the suspension of general aviation operations for a segment of affected parties, thereby removing an existing restriction on their activities, TSA believes there will be little, if any, objection from these parties to immediate implementation of the interim final rule. Moreover, the economic hardship of the operators would be unnecessarily extended by a notice and comment rulemaking. Therefore, delaying implementation until after a notice and public comment period is unnecessary. If some affected parties believe that changes in the interim final rule are warranted, they will have the opportunity to comment on the rule, while other affected parties that are able take advantage of the benefits of the rule may do so without further delay. Therefore, in recognition of the need to begin to restore general aviation operations in a manner that will neither give rise to security risks, nor prolong the economic hardship to affected parties, TSA finds good cause to forgo prior notice and public comment in issuing the interim final rule.

As previously noted, TSA requests comment on all aspects of this rule and will modify the rule if warranted.

Abbreviations of Terms Used In This Document

ADIZ—Air Defense Identification Zone
ASOP—Armed Security Officer Program
ATSA—Aviation and Transportation Security Act
CHRC—Criminal history records check
DASSP—DCA Access Standard Security Program
DCA—Ronald Reagan Washington National Airport
DHS—Department of Homeland Security
FAA—Federal Aviation Administration
FAM—Federal Air Marshal
FAMS—Federal Air Marshal Service
FBI—Federal Bureau of Investigation
FBO—fixed base operator
FRZ—Flight Restricted Zone
LEOSA—Law Enforcement Officers Safety Act
NOTAM—Notice to Airmen

PCSSP—Private Charter Standard Security Program
SSI—Sensitive Security Information
TFR—Temporary Flight Restriction
TFSSP—Twelve-Five Standard Security Program
TSA—Transportation Security Administration

I. Background

A. Operations at DCA

After the September 11, 2001, terrorist attacks against four U.S. commercial aircraft resulting in the tragic loss of human life at the World Trade Center, the Pentagon, and in southwest Pennsylvania, the FAA immediately prohibited all aircraft operations within the territorial airspace of the U.S., with the exception of certain military, law enforcement, and emergency related aircraft operations. This general prohibition was lifted in part on September 13, 2001. In the Washington, DC metropolitan area, however, aircraft operations remained prohibited at all civil airports within a 25 nautical mile radius of the Washington DC Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME). This action was accomplished via the U.S. NOTAM system.¹

Limited commercial air carrier operations were permitted to resume at DCA on October 4, 2001, and through a series of emergency air traffic rules issued by the FAA under 14 CFR 91.139 and NOTAMs that followed, other restrictions were eliminated. Currently operations to and from DCA by aircraft operators that hold a certificate under 14 CFR part 121 and operate under a full security program approved by TSA in accordance with 49 CFR 1544.101(a), or a foreign air carrier security program approved by TSA in accordance with 49 CFR 1546.101(a) or (b), are permitted under NOTAM 3/2126. Generally these are regularly scheduled, commercial, passenger operations. General aviation operations and other operations that are not under one of these security programs under part 1544 or 1546 are prohibited.

As a result of this prohibition, many operators and the businesses they serve have experienced economic hardship. According to estimates prepared by the DCA Fixed Based Operator,²

¹ NOTAMs are used by the FAA to notify pilots of important information, including airspace restrictions. The FAA issued several NOTAMs regarding the restricted airspace over the Washington, DC, metropolitan area. The current NOTAM restricting aircraft operations in the Washington, DC, Flight Restricted Zone is NOTAM 3/2126.

² A Fixed Base Operator is an airport-based commercial enterprise that provides support

approximately 660 general aviation and charter flights occurred per week prior to September 11, 2001. The majority of these were corporate aircraft accommodating business travelers in the Washington, DC, area.

It is important to resume these operations at DCA to permit these operators, their customers, and affected local businesses to recover from the adverse economic impacts brought on by the events of September 11, 2001. However, DCA is located in close proximity to critical Federal Government assets, infrastructure, and functions. Any aircraft arriving at or departing from DCA will fly very near several significant government office buildings and national monuments. It would take very little time for such aircraft to inflict serious damage to any number of buildings in Washington, DC, and the surrounding area. Such an event could occur so quickly that it may not be possible to prevent. Therefore it is necessary to balance the economic interests of operators against the legitimate governmental security risks that exist.

After discussions with the United States Secret Service, the Federal Air Marshal Service (FAMS), the Department of Defense, the Homeland Security Council, and other Federal agencies, it has been determined that the national security concerns surrounding operations at DCA can be addressed effectively by requiring operators to comply with the security procedures set forth in this IFR. Applying these procedures to operations arriving at and departing from DCA will help to protect the critical national assets in the Washington, DC area from an airborne terrorist act. TSA has consulted with the associations that represent the operators subject to this rule, and they understand the need for special procedures at DCA. These operators are prepared to undertake special security procedures in order to recommence operations at DCA.

B. Statutory Background

On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA),³ which created TSA, and transferred civil aviation security functions from the FAA to TSA. TSA transferred the bulk of FAA's civil aviation security regulations (in Title 14, Code of Federal Regulations) to TSA (in Title 49, Code of Federal Regulations) in a separate rulemaking

services to aircraft operators, such as maintenance, overnight parking, fueling, and deicing.

³Pub. L. 107-71, November 19, 2001, 115 Stat. 597.

(see docket number TSA-2002-11602, 67 FR 8340, February 22, 2002).

On December 12, 2003, Congress enacted the Vision 100-Century of Aviation Reauthorization Act.⁴ Section 823 of Vision 100 requires the Secretary of Homeland Security to develop a security plan to permit general aviation aircraft to resume operations into and out of DCA.

II. Summary of the Interim Final Rule

For affected aircraft operators to fly into and out of DCA, they must designate a security coordinator and adopt a DCA Access Standard Security Program (DASSP). As part of the DASSP, they must ensure that all flight crewmembers have undergone a fingerprint-based criminal history records check (CHRC). Once aircraft operators have complied with those requirements, they will be eligible to apply to the FAA for a reservation, and to TSA for authorization, to operate specific flights into and out of DCA.

To receive authorization for a flight, aircraft operators must have name-based threat assessments conducted by TSA on their flight crewmembers and passengers. They must carry an armed security officer who also must have a threat assessment conducted by TSA, as well as specialized training and authorization from TSA. The operators must have their last point of departure from a Fixed Base Operator (FBO)⁵ that holds a security program issued by TSA at an airport designated by TSA (referred to in the IFR as a "gateway airport"). At each gateway airport, TSA will inspect the aircraft and will screen the passengers, their carry-on property, and property carried in the cargo hold of the aircraft, before it departs for DCA. The aircraft operator must also comply with all applicable FAA rules, including those rules for operating in the Flight Restricted Zone (FRZ).⁶

The aircraft operator must reimburse TSA for any costs associated with carrying out this subpart. These costs include \$15 for the threat assessment TSA will conduct for each passenger and crewmember whose information the aircraft operator submits to TSA as part of the flight approval process, and \$296 per round trip into and out of DCA to

cover the costs of using TSA screening personnel and equipment at DCA and the gateway airports.

III. Discussion of the Interim Final Rule

A. Scope and Definitions

This IFR creates a new subpart B in part 1562 of Title 49 of the Code of Federal Regulations (CFR). Subpart B applies to FBOs located at DCA and the gateway airports. It also applies to all aircraft operations into or out of DCA that are conducted under subpart B. The IFR also applies to passengers, crewmembers, and armed security officers onboard aircraft operations operated in accordance with the IFR. Finally, the IFR applies to individuals designated as security coordinators by aircraft operators in accordance with the IFR.

Section 1562.21(b) provides that each person operating an aircraft into or out of DCA must comply with this subpart, with certain exceptions. The exceptions include (1) military, law enforcement, or medivac aircraft operating into or out of DCA; (2) Federal and State Government aircraft operating under an airspace waiver approved by TSA and authorized by FAA;⁷ (3) all-cargo aircraft operations; and (4) passenger aircraft operations conducted under a full security program approved by TSA in accordance with 49 CFR 1544.101(a) or a foreign air carrier security program approved by TSA in accordance with 49 CFR 1546.101(a) or (b).

This IFR does not apply to operations into or out of any airports other than DCA and gateway airports. Similarly, this IFR does not alter or suspend other regulations that TSA has issued or may issue that apply to aircraft operations. Further, this IFR does not affect the FAA's rules for operating into DCA, such as its rules relating to the allocation of reservations under the High Density Rule (14 CFR part 93, subpart K) and the Perimeter Rule (14 CFR 93.253), which prohibits a nonstop commercial aircraft operation to DCA from an airport that is more than 1,250 miles away from DCA.⁸

The IFR specifies that any aircraft operation into or out of DCA under the IFR must be conducted in accordance

⁴Pub. L. 108-176, December 12, 2003, 117 Stat. 2490.

⁵An FBO is an airport-based commercial enterprise that provides support services to aircraft operators, such as maintenance, overnight parking, fueling, and de-icing.

⁶The FRZ is an airspace ring centered on the Washington DC VOR/DME with a radius of approximately 15 nautical miles. In order to enter and operate in FRZ airspace, an operator must comply with certain access and security procedures implemented by FAA and TSA.

⁷TSA will continue to coordinate with FAA, which authorizes waivers into and out of DCA for these and other certain operations, including Elected Official Operations, Government Operations, and Special Operations, in accordance with established policy.

⁸Due to slot control restrictions under the High Density Rule and the need to limit traffic volume in the FRZ for security purposes, it is expected that unscheduled aircraft operations into and out of DCA will be capped at 4 per hour for 12 hours a day, for a total of 48 operations daily.

with the DASSP and any other TSA-approved security program that covers that operation. If any requirements of the DASSP conflict with the requirements of another TSA-approved security program, such as a Twelve-Five Standard Security Program (TFSSP) or Private Charter Standard Security Program (PCSSP), the aircraft operation into or out of DCA must be conducted in accordance with the requirements of the DASSP.

For purposes of the IFR, the following definitions apply:

“Armed Security Officer Program” is defined as the security program approved by TSA, in coordination with the FAMS, for armed security officers authorized to carry a firearm in accordance with the IFR.

“Crewmember” is defined as a person assigned to perform duty in an aircraft during flight time. This includes pilots and flight attendants, but does not include armed security officers authorized to carry a firearm in accordance with the IFR.

“DCA” is defined as Ronald Reagan Washington National Airport.

“DASSP” (DCA Access Standard Security Program) is defined as the aircraft operator security program approved by TSA under part 1562 for aircraft operations into and out of DCA.

“FBO” is defined as a fixed base operator that has been approved by TSA under part 1562 to serve as a last point of departure for flights into or out of DCA. The approved FBOs are located at either DCA or one of the gateway airports.

“FBO Security Program” is defined as the security program approved by TSA under part 1562 for FBOs to serve flights into or out of DCA.

“Flightcrew member” is defined as a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time. This is the same definition provided under 49 CFR 1540.5.

“Gateway airport” is defined as an airport that has been approved by TSA as a last point of departure for flights into DCA. More information on the gateway airports is provided below.

“Passenger” is defined as any person other than a flightcrew member on an aircraft. A “passenger” includes armed security officers authorized to carry a firearm in accordance with the rule.

B. Aircraft Operator Requirements

To operate into or out of DCA under part 1562, an aircraft operator must comply with the following requirements.

1. Security Coordinators

The aircraft operator must designate an individual as a security coordinator responsible for implementing the DASSP and other security requirements under the IFR. The aircraft operator must provide TSA with the security coordinator's contact information and availability in accordance with the DASSP.

The security coordinator must undergo a fingerprint-based criminal history records check (CHRC) that does not disclose that he or she has a disqualifying criminal offense as described in 49 CFR 1544.229(d).⁹ The IFR provides that this requirement is met if a security coordinator has already undergone a fingerprint-based CHRC in accordance with 49 CFR 1542.209, 1544.229, or 1544.230, with his or her current employer. The security coordinator also must undergo a security threat assessment performed by TSA.

To initiate the CHRC, the security coordinator must submit his or her fingerprints and required information to a fingerprint collector approved by TSA. The collector will forward the information to TSA, and TSA will forward the information to the Federal Bureau of Investigation (FBI). The FBI will conduct the CHRC and send the results to TSA, and TSA will adjudicate the results to verify that the security coordinator does not have a disqualifying criminal offense described in 49 CFR 1544.229(d). This process is similar to the process used for aircraft operators with a Twelve-Five Standard Security Program (TFSSP) or a Private Charter Standard Security Program (PCSSP).

If TSA informs the security coordinator that the CHRC discloses a disqualifying offense, he or she may seek to correct the record in accordance with the procedures set forth in 49 CFR 1544.229(h) and (i) regarding notification and correction of records. These procedures require an aircraft operator to notify an applicant when the applicant's FBI record discloses information that would disqualify the applicant, and provide the applicant with a copy of the FBI record if the applicant requests it. The applicant may contact the local jurisdiction responsible for the information in the record and the FBI to complete or correct the information, provided that the applicant notifies the aircraft

operator in writing, within 30 days of receiving notification that the applicant's FBI record discloses a disqualifying criminal offense, of his or her intent to correct the record. TSA notes that the procedures set forth in 49 CFR 1544.229(h) and (i) apply to the aircraft operator. Since TSA will be adjudicating the CHRC results for security coordinators under this IFR, TSA will perform the functions required of aircraft operators by 49 CFR 1544.229(h) and (i).

For purposes of the security threat assessment, the security coordinator must submit to TSA: his or her (1) legal name, including first, middle, and last; any applicable suffix, and any other names used; (2) current mailing address, including residential address if different than current mailing address; (3) date and place of birth; (4) citizenship status and date of naturalization if the individual is a naturalized citizen of the United States; and (5) alien registration number, if applicable. The security operator also may voluntarily provide his or her social security number. Using that information, TSA will conduct a security threat assessment and inform the aircraft operator of the results. If TSA determines that the security coordinator may pose a security threat, the aircraft operator may not designate the individual as a security coordinator. Failure to provide the social security number may result in delays in processing the application. Failure to provide the other information may result in the applicant being denied the request to serve as a security coordinator.

2. DCA Access Standard Security Program (DASSP)

The aircraft operator must adopt and carry out the DASSP. To receive the DASSP, an aircraft operator must contact TSA through TSA's Office of Aviation Programs and request the DASSP. TSA will verify that the aircraft operator is a valid operator and then provide the aircraft operator with a non-disclosure agreement that the aircraft operator must sign, as the DASSP contains sensitive security information (SSI) that must be protected in accordance with TSA's SSI regulation at 49 CFR part 1520. TSA then will provide the DASSP to the aircraft operator. Once the aircraft operator implements the requirements of the DASSP, the aircraft operator must notify TSA. TSA will then inspect the aircraft operator to ensure that the program requirements have been implemented in accordance with the DASSP. Upon a satisfactory inspection, the aircraft operator will be eligible to apply to TSA

⁹ These are the same disqualifying crimes used for TSA screeners, individuals with unescorted access to secured areas of an airport, and crewmembers employed by an aircraft operator operating under a TFSSP or PCSSP.

for approval to operate flights into and out of DCA in accordance with the requirements in the IFR, explained in further detail below.

3. Flightcrew Members

The aircraft operator must ensure that each flightcrew member¹⁰ who will be assigned to an aircraft operating into or out of DCA complies with the requirements of the IFR. Each flightcrew member must undergo a fingerprint-based CHRC, using the same process and list of disqualifying criminal offenses used for the designated security coordinator. If a flightcrew member is informed that the CHRC discloses a disqualifying offense, he or she also may seek to correct the record in the same manner as the designated security coordinator. The IFR provides that the CHRC requirement is met if a flightcrew member has already undergone a fingerprint-based CHRC in accordance with 49 CFR 1542.209, 1544.229, or 1544.230, with his or her current employer.

Each flightcrew member also must undergo a check of their FAA record. A flightcrew member may not have a record on file with the FAA of a violation of: (1) A prohibited area designated under 14 CFR part 73; (2) a flight restriction established under 14 CFR 91.141 (flight restrictions in the proximity of the President and certain other parties); (3) special security instructions issued under 14 CFR 99.7 (air defense identification zone or defense area); (4) a restricted area designated under 14 CFR part 73; (5) emergency air traffic rules issued under 14 CFR 91.139 (emergency conditions); (6) a temporary flight restriction designated under 14 CFR 91.137 (vicinity of a disaster or hazard area), 91.138 (national disaster area in the State of Hawaii), or 91.145 (management of aircraft operations in the vicinity of aerial demonstrations and major sporting events); or (7) an area designated under 14 CFR 91.143 (flight limitations in the proximity of space flight operations). These violations also are considered disqualifying for pilots who apply for approval to operate to and from the Maryland Three Airports, which are located in the FRZ.¹¹

4. Flight Approvals

The aircraft operator must apply for and receive a reservation from the FAA and authorization from TSA for each

flight into and out of DCA.¹² The aircraft operator first must apply to the FAA for assignment of a tentative reservation to operate into and/or out of DCA. The FAA will produce a tentative reservation based on air traffic scheduling and other relevant factors.

Then the aircraft operator must apply for TSA authorization for the flight by submitting to TSA the following information at least 24 hours prior to aircraft departure: (1) For each passenger and crewmember (both flightcrew and cabin crew) on the aircraft: legal name, including first, middle, and last; any applicable suffix, and any other names used; current mailing address, including residential address if different than current mailing address; date and place of birth; citizenship status and date of naturalization if the individual is a naturalized citizen of the United States; and alien registration number, if applicable; (2) the registration number of the aircraft; (3) the flight plan; and (4) any other information required by TSA.¹³ TSA will conduct a name-based security threat assessment for each passenger and crewmember. If TSA notifies the aircraft operator that a passenger or crewmember may pose a security threat, the aircraft operator must ensure that the passenger or crewmember does not board the aircraft. TSA's ability to conduct a security threat assessment will be facilitated by the use of social security numbers and asks that passengers and crew consider voluntarily submitting social security numbers to TSA. Failure to provide the social security number may result in delays in processing the application. Failure to provide the other information may result in the applicant being denied the request to be a passenger or crewmember.

If TSA authorizes the flight, TSA will transmit its authorization to the FAA for assignment of a final reservation to operate into or out of DCA. Once FAA assigns the reservation, TSA will notify the aircraft operator.

The IFR specifies that TSA may, at its discretion, cancel any or all flight approvals at any time without prior notice to the aircraft operator. For example, if the threat level in the Washington, D.C., area or in the vicinity

of any of the gateway airports is set at ORANGE or RED, TSA is likely to cancel any and all flight approvals into and out of DCA. The IFR also specifies that TSA may, at its discretion, permit a flight to or from DCA to deviate from the requirements of the IFR, if TSA finds that such action would not be detrimental to transportation security or the safe operation of the aircraft. TSA will consult with the U.S. Secret Service, FAMS, Department of Defense, FAA, and other relevant government agencies prior to approving a flight to deviate from the requirements of the IFR. Finally, the IFR provides that TSA may, at its discretion, require any flight into or out of DCA under this subpart to comply with additional security measures. For instance, for certain operations, such as those with a large number of persons on board, TSA may require additional armed security officers onboard the aircraft.

5. Operating Requirements

For each flight into and out of DCA, an aircraft operator must comply with the following operating requirements specified in the IFR. The aircraft operator must ensure that each flight into DCA departs from a gateway airport and makes no intermediate stops before arrival at DCA. More information on the gateway airports is provided below.

The aircraft operator must ensure that the aircraft has been searched in accordance with the DASSP, and that each passenger and crewmember and all accessible property and property in inaccessible cargo holds on the aircraft has been screened in accordance with the DASSP prior to boarding the aircraft. TSA personnel will conduct the aircraft searches and screening of passengers, crewmembers, and property. The aircraft operator must ensure that each passenger and crewmember on the aircraft provides TSA screening personnel with a valid government-issued picture identification. If the aircraft is equipped with a cockpit door, the aircraft operator must ensure that the door is closed and locked at all times during the operation of the aircraft to or from DCA, unless FAA regulations require the door to remain open.¹⁴ The aircraft operator must notify the National Capital Region Coordination Center prior to departure of the aircraft from a gateway airport or DCA.

The aircraft operator must ensure that each aircraft operating into or out of DCA has onboard at least one armed security officer who meets the

¹⁰ These requirements do not apply to cabin crewmembers.

¹¹ See 70 FR 7150, February 10, 2005.

¹² As noted above, we expect that the total number of takeoff and landing reservations at DCA under the IFR will be limited to 48 per day.

¹³ The aircraft operator is required to submit the required information for each passenger and crewmember only once per round trip flight. If any passengers or crewmembers are added on the flight out of DCA, the aircraft operator must submit the required information for those individuals at least 24 hours prior to the aircraft departing DCA.

¹⁴ TSA notes that FAA regulations require that some cockpit doors remain open during takeoff and landing for safety reasons.

requirements specified in the IFR, which are discussed in greater detail below. For some flights, such as flights with a large number of passengers, TSA may require more than one armed security officer to be onboard the aircraft. In addition, if TSA or the FAMS requires that the aircraft have one or more Federal Air Marshals (FAMS) on board, the aircraft operator must allow the FAM(s) onboard, at no cost to the Federal Government.

The aircraft operator must ensure that the aircraft operates under instrument flight rules only. Finally, the aircraft operator must ensure that each passenger complies with any security measures mandated by TSA, and that no prohibited items are onboard the aircraft. TSA intends to use the same list of prohibited items that is currently used for regularly-scheduled commercial aircraft operations. In addition, as explained in greater detail below, TSA rules for aviation security, including the rules prohibiting interference with security measures and screening personnel and requiring individuals to submit to screening and inspection, will apply to passengers and crewmembers on aircraft operated into and out of DCA in accordance with the IFR.

6. Costs

The aircraft operator must pay any costs and fees required under this part. As explained in greater detail below, the aircraft operator must pay a \$15 threat assessment fee for each passenger and crewmember whose information the aircraft operator submits to TSA as part of the flight approval process. In addition, the aircraft operator must reimburse TSA for additional costs TSA will incur in carrying out the requirements of the IFR.

On October 1, 2003, Congress enacted legislation directing TSA to collect reasonable fees to cover the costs of providing credentialing and background investigations in the transportation field.¹⁵ Section 520 of the Department of Homeland Security Appropriations Act of 2004 (2004 Appropriations Act) authorizes TSA to collect fees to pay for the following costs: Conducting or obtaining a criminal history records check (CHRC); reviewing available law enforcement databases, commercial databases, and records of other governmental and international agencies; reviewing and adjudicating requests for waivers and appeals of TSA

decisions; and any other costs related to performing the background records check or providing the credential.

Section 520 of the 2004 Appropriations Act mandates that any fee collected be available for expenditure only to pay for the costs incurred in providing services in connection with performing the background check or providing the credential. The fees collected shall remain available until expended.

Under the IFR, each aircraft operator must remit to TSA a fee of \$15 per person to defray the costs of the security threat assessment performed for passengers (including any armed security officers) and crewmembers on each flight operated into or out of DCA. The aircraft operator is required to pay this fee each time the aircraft operator submits the manifest to TSA for the required security threat assessments. In addition, each aircraft operator must reimburse TSA for the costs TSA incurs in carrying out the requirements of the IFR.

Population

The number of security threat assessments performed as a result of this IFR is drawn from general aviation industry data as well as TSA operational assumptions. The total figure is roughly equivalent to the product of two separate estimates: Total Round Trips Through DCA is the number of available general aviation slots divided by half (4 slots/hour $\times$ 12 hours/day $\times$ 365 days/year)/2 departures/round trip = 8,760), taking into account that round trips account for two allocated slots. This analysis assumes 100 percent capacity utilization of the available 48 daily slots, a premise based on pre-September 11, 2001, general aviation flight throughput of approximately 30,000 annual round trips through DCA. The second component is Average Persons Per Flight. Based on National Business Aviation Association (NBAA) analysis of pre-September 11, 2001, general aviation traffic at the airport, TSA has estimated that the Average Persons Per Flight is 6 persons (2 crewmembers and 4 passengers).¹⁶ The product of these two numbers is 52,560 (8,760 round trips $\times$ 6 persons per flight).

Operational Assumptions

To develop its cost estimate, TSA has assumed the following procedures for general aviation flight authorizations and security threat assessments:

Step 1: An aircraft operator approved by TSA under the DASSP will apply to

the FAA for assignment of a tentative reservation to operate into and (typically) out of DCA. FAA will produce a tentative reservation based on air traffic scheduling availability and other relevant factors.

Step 2: The aircraft operator will apply to TSA for a flight approval and submit the names and other required information of all crewmembers and passengers.

Step 3: TSA will conduct name-checks against multiple government watch lists and other terrorist threat sources.

Step 4: Once TSA clears the crewmembers and passengers and approves the flight, TSA will transmit its approval to FAA for assignment of a final reservation to operate into and/or out of DCA.

Step 5: Once FAA assigns the final reservation, TSA will notify the aircraft operator.

Step 6: TSA will coordinate the aircraft operator's flight schedule with appropriate TSA field screening and inspection operations to perform physical screening at FBO operations at DCA or other gateway airports as required.

Cost Components

The following major cost components have been identified as required to perform the security threat assessment and requisite flight authorization functions. Each major component's cost estimates and supporting rationale and/or sources behind the estimate are discussed in detail below:

- Flight authorization automated system development ("Systems Costs")
- Federal authorization staff costs ("Program Staff Costs")
- Security threat assessment process costs ("Name Check Costs")

Systems Costs

To support up to 48 flights per day into and out of DCA (and all requisite information management of flight and applicant information), a Commercial Off-the-Shelf (COTS) software application will be required. Currently, TSA performs a similar processing function for other types of flight authorizations that cumulatively average some 400+ flight authorizations per week, or almost 23,000 flight authorizations per year. At present, TSA employs 9 full time employees (FTEs) to perform this labor-intensive process.

Rather than requiring significant numbers of additional personnel to handle the workload under this IFR, TSA intends to purchase an existing COTS application to automate much of the current flight authorization function

¹⁵ Department of Homeland Security Appropriations Act, 2004, Section 520, Pub. L. 108-90, October 1, 2003, 117 Stat. 1156 (6 U.S.C. 469) (2004 Appropriations Act).

¹⁶ According to the NBAA, over 90% of pre-September 11, 2001 general aviation traffic at DCA was corporate. A similar ratio is assumed for the current rollout.

at TSA, including operations into and out of DCA. Such a system is already operational and in use at the FAA. At a high level, the automated functionality and thus efficiency gained from such a system will be the following:

- Automation of applicant name, other biographical information, and flight information submission and transmission (rather than via fax and manual key entry of current waiver process).
- Automated applicant information submission to TSA's security threat assessment operations (versus fax/manual list management).
- Automated information exchange, including electronic signature for clearance documents and flight slotting, between TSA and FAA (versus current manual courier of documents daily between the two agencies).
- Automated tracking of flight volume/metrics, applicants and other performance metrics reporting capabilities as required.

TSA realizes that such a system will vastly improve not only the contemplated process for flight authorizations into and out of DCA, but also the efficiency and thus cost of the existing process for other flight authorizations. TSA notes that Section 520 of the Department of Homeland Security Appropriations Act, 2004, Pub. L. 107-90, 117 Stat. 1137 (Oct. 1, 2003) directs TSA to recover its costs related to providing a credential or performing background checks. As the flight authorization services are inextricably linked to providing the security threat

assessments under this program, TSA is including the cost of providing these services in the threat assessment fee.

TSA intends to charge aircraft operators operating into and out of DCA in accordance with the IFR only for those system costs equal to the proportion of total expected flight authorizations between the DCA program and all other flight authorization programs. TSA estimates that the acquisition, installation, and maintenance of a similar COTS application would total some \$4.1 million over a 5-year system and program lifecycle period. Thus, as the total annual flight authorization volume for general aviation operations at DCA is some 8,760 or 28 percent of the total annual expected volume of some 31,600 flight authorizations only 28 percent of the total 5-year system costs will be recovered in the fees charged under this IFR. The remaining 72 percent of system cost will become the responsibility of the existing flight authorization programs.

TSA will also incur several one-time technical "setup" costs, including an estimated \$100,000 to develop system interfaces with TSA systems for the security threat assessment, \$100,000 application installation and hosting setup charges, and an estimated \$100,000 for online fee payment functionality via the Federal Government's required electronic payment system for web-based payments, www.pay.gov.

Program Staff Costs

Even with the reduction in manual labor TSA should realize with the automated flight authorization COTS system, TSA still estimates that 4 full time employees (FTEs) will be required to perform those functions that will not be automated. These functions are generally those that still require "live" communication and human judgment. This estimate also assumes that the 24-hour security threat assessment response time will necessitate some staffing during all 24 hours per day, 7 days per week. TSA has assumed annual staff cost for salary, benefits, and overhead of \$100,000 per employee.

Name Check Costs

TSA incurs both labor, system, and infrastructure/overhead costs each time it performs a name-based check against the multiple governmental watch lists and other terrorist threat sources. For the small portion of those names that are "hits" (names that match any of the various watch lists), TSA must perform identity verification and occasionally coordinate interagency law enforcement/apprehension activities. Based on TSA's operational history with other similar populations applying for clearance, and what it estimates the DCA general aviation population to require in terms of identity verification and other vetting operations, a \$2 per applicant security threat assessment cost has been derived. This fee is included in the \$15 security threat assessment fee described below.

TABLE 1.—5-YEAR LIFECYCLE COSTS
[Program operating year]

	Year 1	Year 2	Year 3	Year 4	Year 5	Total
<i>Total Number of security threat assessments</i>	52,560	52,560	52,560	52,560	52,560	262,800
<i>Fixed Costs:</i>						
Automated Flight Authorization System	\$713,070	\$106,961	\$106,961	\$106,961	\$106,961	\$1,140,912
TSA Interface	100,000	0	0	0	0	100,000
Payment Interface	100,000	0	0	0	0	100,000
System Hosting Set-Up Costs	100,000	0	0	0	0	100,000
Scheduling Staff	400,000	400,000	400,000	400,000	400,000	2,000,000
<i>Total Fixed Costs</i>	1,513,070	506,961	506,961	506,961	506,961	3,440,912
<i>Variable Costs:</i>						
Name Checks	105,120	105,120	105,120	105,120	105,120	525,600
<i>Total Costs</i>	1,518,190	612,081	612,081	612,081	612,081	3,966,512

Fee Summary

Based on the costs and populations estimated above, TSA has calculated a fee of \$15 per person for the security threat assessments and requisite flight authorization services costs. To calculate the fee, TSA has amortized the

fixed costs of the security threat assessments over five years as this is generally accepted business practice for software and other infrastructure depreciation. The equation used to determine the fee is \$3,440,912 (fixed costs) + \$525,600 (variable costs over 5

years)/262,800 (5-year population of applicants) = \$15 per person.

Pursuant to the Chief Financial Officers Act of 1990, DHS and TSA are required to review these fees no less than every two years.¹⁷ Upon review, if

¹⁷ 31 U.S.C. 3512.

it is found that the fees are either too high (that is, total fees exceed the total cost to provide the services) or too low (that is, total fees do not cover the total costs to provide the services), TSA may propose changes to the fees. In addition, as DHS and TSA identify and implement additional efficiencies across numerous threat assessment and credentialing programs, any resulting cost savings will be incorporated into the fee levels accordingly.

In addition to the \$15 per person fee, the IFR requires each aircraft operator to pay TSA for the costs TSA expends in carrying out this subpart. These costs include the costs of using screening personnel and equipment at DCA and the gateway airports. These costs are currently estimated at \$296 per round trip into and out of DCA. TSA may revise these reimbursement cost figures if TSA determines that its estimated costs are too high or too low, and the reimbursable amounts may be modified periodically to reflect the most current costs of services provided.

All fees and reimbursement must be remitted to TSA in a form and manner approved by TSA, and TSA will not issue any refunds, unless a fee or reimbursement was paid in error. TSA will provide specific fee remittance instructions prior to enactment of the IFR. The IFR specifies that if an aircraft operator does not remit to TSA the fees and reimbursement required under the IFR, TSA may decline to process any requests for flight authorizations from the aircraft operator.

TSA notes that the aircraft operator or flightcrew member may also be required to pay a fee to any fingerprint collector for the fingerprint collection for crewmembers as well as the fee charged by the FBI for conducting a CHRC. In addition, the aircraft operator is responsible for paying to have a TSA qualified armed security officer onboard the aircraft.

7. Protection of Sensitive Security Information

The aircraft operator must restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in 49 CFR part 1520, to persons with a need to know, and refer all requests for SSI by other persons to TSA. The IFR amends part 1520 to specify that the DASSP is SSI and that aircraft operators who receive the DASSP are covered persons under part 1520. Thus, aircraft operators subject to the IFR will be subject to the SSI protection requirements in part 1520. As explained further below, the IFR also amends part 1520 to cover FBOs and

armed security officers subject to part 1562.

8. Other Security Procedures

The aircraft operator must comply with any additional security procedures required by TSA through order, Security Directive, or other means.

TSA notes that the following sections of 49 CFR part 1540 apply to persons involved with this program: § 1540.103, which prohibits certain fraud and intentional falsification; § 1540.105, which forbids certain interference with security measures; § 1540.107, which requires individuals to submit to screening and inspection; and § 1540.109, which prohibits persons from interfering with screening personnel. These sections apply throughout the TSA rules for aviation security (49 CFR chapter XII, subchapter C), and therefore now apply in the context of the requirements of part 1562.

In addition, this IFR amends § 1540.111 to apply to passengers on aircraft operated into and out of DCA under the DASSP. That section currently prohibits passengers from carrying weapons, explosives, and incendiaries on certain scheduled and charter flights, and is being expanded to also apply to passengers on aircraft operated into and out of DCA in accordance with the IFR and the DASSP.

9. Compliance

The IFR requires an aircraft operator to permit TSA to conduct any inspections or tests, including copying records, to determine compliance with the IFR and the DASSP. The IFR also requires an aircraft operator, at the request of TSA, to provide evidence of compliance with the IFR and the DASSP, including copies of records.

The IFR specifies that noncompliance with the IFR or the DASSP may result in the cancellation of any and all of an aircraft operator's flight approvals and other enforcement action, as appropriate.

B. Fixed Base Operator Requirements

Each fixed base operator (FBO) from which flights into DCA operate under the IFR must adopt and carry out the FBO Security Program. TSA will provide the FBO Security Program to each participating FBO at DCA and the gateway airports. The gateway airports are: (1) Seattle-Tacoma, Washington; (2) Boston Logan, Massachusetts; (3) Houston Hobby, Texas; (4) White Plains, New York; (5) LaGuardia, New York; (6) Chicago Midway, Illinois; (7) Minneapolis-St. Paul, Minnesota; (8) West Palm Beach, Florida; (9) San

Francisco, California; (10) Teterboro, New Jersey; (11) Philadelphia, Pennsylvania; and (12) Lexington, Kentucky. TSA may revise or expand this list if necessary or appropriate.

TSA identified these airports as last points of departure for DCA based on volume and geographical reasons. Eight of the airports represent those that serviced the largest number of general aviation operations into DCA prior to September 11, 2001. Those airports are predominately centered in the northeast corridor where most DCA bound flights occur. The other airports are commercial service airports located throughout the U.S. that are in close proximity to general aviation airports that served DCA prior to September 11, 2001.

The FBO must designate a security coordinator who meets the same requirements as designated aircraft operator security coordinators. The security coordinator will be responsible for implementing the FBO Security Program and other security requirements required by the IFR. The FBO must provide TSA with the security coordinator's contact information and availability in accordance with the FBO Security Program.

The FBO must support the screening of persons and property, and the search of aircraft, in accordance with the requirements of the FBO Security Program.

The FBO must restrict the distribution, disclosure, and availability of SSI, as defined in 49 CFR part 1520, to persons with a need to know, and refer all requests for SSI by other persons to TSA. The IFR amends part 1520 to specify that the FBO Security Program is SSI and that FBOs that receive the FBO Security Program are covered persons under part 1520. Thus, FBOs subject to the IFR will be subject to the SSI protection requirements in part 1520.

The FBO must permit TSA to conduct any inspections or tests, including copying records, to determine compliance with this part and the FBO Security Program. In addition, at the request of TSA, the FBO must provide evidence of compliance with this part and the FBO Security Program, including copies of records.

C. Armed Security Officer Requirements

The IFR specifies the following requirements for security officers authorized to be armed onboard an aircraft operating into or out of DCA under a DASSP. Each armed security officer must comply with an Armed

Security Officer Program (ASOP) issued by TSA.

The armed security officer must be qualified to carry a firearm in accordance with the IFR. To be qualified, an armed security officer must be an active law enforcement officer, a retired law enforcement officer, or another individual who meets the requirements specified in the IFR.

A qualified active law enforcement officer is an employee of a governmental agency who: (1) Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law; (2) has statutory powers of arrest; (3) is authorized by the agency to carry a firearm; (4) is not the subject of any disciplinary action by the agency; (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and (6) is not prohibited by Federal law from receiving a firearm.

A qualified retired law enforcement officer is an individual who: (1) retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability; (2) before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest; (3) before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more, or retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency; (4) has a non-forfeitable right to benefits under the retirement plan of the agency; (5) is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and (6) is not prohibited by Federal law from receiving a firearm.

These requirements are consistent with the requirements specified for law enforcement officers and retired law enforcement officers under the Law Enforcement Officers Safety Act of 2004 (LEOSA).¹⁸ LEOSA allows qualified law enforcement officers and qualified retired law enforcement officers to carry firearms in State and municipal jurisdictions beyond their own, but does not eliminate all restrictions that prohibit carrying firearms in certain areas or places, such as State or local government buildings and parks. Likewise, this law does not supersede or

affect Federal laws and regulations that restrict carriage of firearms in certain places, including 49 U.S.C. 46505 (criminal offense for carrying a weapon on aircraft) and the requirement to comply with all applicable provisions of 49 CFR 1544.219 (Carriage of Accessible Weapons) for a law enforcement officer to carry a firearm aboard a commercial aircraft. TSA notes that not all relevant jurisdictions have implemented the requirements of LEOSA, so some law enforcement officers and retired law enforcement officers may not yet be qualified under LEOSA. However, the requirements in this IFR are consistent with the requirements in LEOSA.

Under the IFR, TSA, in coordination with the FAMS, may authorize an individual other than an active or retired law enforcement officer to act as an armed security officer on an aircraft operating into or out of DCA, provided that they comply with the qualifications, threat assessment, training, and other requirements specified in the IFR. TSA, in coordination with the FAMS, is developing qualifications for individuals other than active and retired law enforcement officers, and will place them in the Aviation Security Officer Program. At a minimum, these individuals must not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance and must not be prohibited by Federal law from receiving a firearm.

Each armed security officer must undergo a fingerprint-based CHRC that does not disclose that he or she has a criminal offense that would disqualify him or her from possessing a firearm under 18 U.S.C. 922(g). If an armed security officer is informed that the CHRC discloses a disqualifying offense, he or she may seek to correct the record in the same manner as a designated security coordinator or flightcrew member under the IFR.

Each armed security officer must submit to TSA his or her: (1) Legal name, including first, middle, and last; any applicable suffix, and any other names used; (2) current mailing address, including residential address if different than current mailing address; (3) date and place of birth; (4) citizenship status and date of naturalization if the individual is a naturalized citizen of the United States; and (5) alien registration number, if applicable. Armed security officers also are asked to voluntarily submit social security numbers to facilitate TSA's security threat assessment.

TSA will use that information to conduct a name-based security threat assessment. Each armed security officer

must undergo the name-based security threat assessment prior to receiving authorization from TSA and prior to boarding an aircraft operating into or out of DCA under a DASSP. If TSA notifies an aircraft operator that an armed security officer may pose a security threat, the aircraft operator may not use that armed security officer to comply with the requirements of the IFR. Failure to provide the social security number will result in delays in processing the application. Failure to provide the other information may result in the applicant being denied the request to serve as an armed security officer under this program.

Each armed security officer also must be authorized by TSA, in coordination with the FAMS, to carry a firearm under 49 U.S.C. 44903(d). That provision allows the Assistant Secretary of Homeland Security for TSA, with the approval of the Attorney General and the Secretary of State, to authorize individuals who carry out air transportation security duties to carry firearms and make arrests without warrant for any offense against the United States committed in the presence of the individual or for a felony under the laws of the United States, if the individual reasonably believes that the individual to be arrested has committed or is committing a felony.

Each armed security officer must have basic law enforcement training acceptable to TSA. The armed security officer also must complete a TSA-approved training course, developed in coordination with the FAMS, which will initially be provided by the Federal Government. Initially, this course will consist of such components as are germane to operating in this unique environment. However, TSA may augment this course with additional training in the future. The armed security officer will be required to pay for any costs associated with this training.

Each armed security officer must comply with an ASOP issued by TSA. The ASOP will contain instructions on the authorized use of force while onboard an aircraft operating into or out of DCA. Because the ASOP contains SSI, armed security officers must restrict the distribution, disclosure, and availability of the ASOP to persons with a need to know in accordance with 49 CFR part 1520, and refer all other requests for SSI by other persons to TSA.

The IFR authorizes an armed security officer approved by TSA to carry a firearm in accordance with the ASOP on an aircraft operating under a DASSP into or out of DCA, and to transport a firearm in accordance with the ASOP at

¹⁸ Pub. L. 108-277, July 21, 2004.

any airport as needed to carry out duties under this subpart, including for travel to and from flights conducted under this subpart. It also authorizes an armed security officer approved by TSA to use force, including deadly force, in accordance with the ASOP.

The IFR prohibits an armed security officer onboard an aircraft operating into or out of DCA from consuming alcohol or using an intoxicating or hallucinatory drug or substance during the flight and within 8 hours prior to boarding the aircraft. The IFR requires each armed security officer onboard an aircraft operating into or out of DCA to carry a credential issued by TSA. The armed security officer must present the TSA-issued credential for inspection when requested by an authorized representative of TSA, FAA, the FAMS, the National Transportation Safety Board, any Federal, State, or local law enforcement officer, or any authorized aircraft operator representative. The armed security officer also must identify himself or herself to all crewmembers either personally or through another member of the crew before the flight. In addition, TSA and the FAMS may conduct random inspections of armed security officers, to ensure compliance with the ASOP.

Finally, the IFR provides that at the discretion of TSA, in coordination with the FAMS, the armed security officer's authorization under this part and 49 U.S.C. 44903(d) is suspended or withdrawn upon notification by TSA.

D. Implementation Schedule

TSA is planning to implement this program in two phases, and the program will be operational at the earliest date an aircraft operator is determined by TSA to be in compliance with the security requirements in this IFR. In Phase I, TSA expects to permit the following operations into and out of DCA:

- Operators under a partial security program approved by TSA under 49 CFR 1544.101(b), which operate aircraft with a passenger seating configuration of 31 or more but 60 or fewer seats.
- Operators under a PCSSP approved by TSA under 49 CFR 1544.101(f), which operate aircraft with a passenger seating configuration of 61 or more seats or a maximum certificated takeoff weight of 45,500 kg (100,309 pounds) or more.
- Operators in scheduled or charter service with a TFSSP approved by TSA under 49 CFR 1544.101(d), which operate aircraft with a maximum certificated takeoff weight of greater than 12,500 pounds.
- Aircraft operated by corporations.

TSA anticipates that approximately one year after implementing Phase I, the agency will evaluate the feasibility of Phase II, which may include the following operations:

- Aircraft operated by private persons.
- Scheduled and charter operations in aircraft not otherwise required to be under security programs (maximum certificated takeoff weight of 12,500 pounds or less).

In this way, the initial implementation will include those operators that tend to have more sophisticated operations and professional, experienced flight departments. These persons are likely to be most able to comply with the stringent security measures set out in this program. As TSA gains experience with this program and makes any adjustments found necessary, the agency will consider expanding the program to additional operators.

IV. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires Federal agencies to consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This rulemaking contains information collection activities subject to the PRA. Accordingly, the following information requirements are being submitted to OMB as an emergency processing request for its review.

Title: Ronald Reagan Washington National Airport: Enhanced Security Procedures for Certain Operations.

Type of Request: Emergency processing request of new collection.

Summary: Since September 11, 2001, general aviation aircraft operations have been prohibited at DCA. TSA is issuing this IFR to restore access to DCA for certain aircraft operations while maintaining the security of critical Federal Government and other assets in the Washington, DC Metropolitan Area. The IFR establishes security procedures for aircraft operators and gateway airport operators, and security requirements relating to crewmembers, passengers, and armed security officers onboard aircraft operating to or from DCA.

Use of: FBOs at DCA and the 12 gateway airports will be required to provide TSA with the fingerprints and identifying information of individuals designated as security coordinators in

accordance with the IFR. Aircraft operators that choose to operate into and out of DCA in accordance with the IFR will be required to provide TSA with fingerprints and identifying information of flightcrew members and individuals designated as security coordinators. TSA will use this information to perform a CHRC and a security threat assessment to determine if these individuals pose a security threat.

In addition, such aircraft operators will be required to provide TSA with identifying information for all crewmembers and passengers onboard each aircraft that operates into and out of DCA. TSA will use this information to perform security threat assessments in order to assess if the security coordinators, crewmembers, or passengers may pose a security threat.

Aircraft operators also will be required to provide TSA with the flight plan and registration number of any aircraft that operates to or from DCA. TSA will use this information to track and identify approved aircraft.

Armed security officers approved in accordance with the IFR will be required to provide TSA with fingerprints and identifying information. TSA will use this information to perform a CHRC and a threat assessment in order to assess whether the armed security officers pose a security threat.

Respondents (including number of): The likely respondents to this information collection requirement are general aviation passenger aircraft operators that operate into or out of DCA in accordance with the IFR, fixed base operators at DCA and the gateway airports, and armed security officers who apply for TSA approval in accordance with the IFR. TSA estimates that approximately 25 FBOs (one at DCA and two at each of the 12 gateway airports) will be willing to voluntarily participate in the FBO Security Program. TSA does not have current data on how many operators will be impacted by this rule. However, in the year preceding September 11, 2001, approximately 1,900 operators that would be subject to this rule flew into DCA. In that same time period, there were on average 660 flights per week involving these operators. However, the IFR limits the number of airports from which these operators can depart, and the number of takeoff and landing reservations at DCA is expected to be limited to 48 per day, so the total number of flights into DCA will undoubtedly be lower than the pre-2001 numbers. Accordingly, TSA assumes that the number of aircraft operators that

will apply for access to DCA will be significantly less than the number of aircraft operators that operated into and out of DCA prior to September 11, 2001.

TSA estimates that approximately 500 aircraft operators will apply for access to DCA and thus be required to respond to the information collection requirements. TSA estimates that approximately 1,500 armed security officers will apply for TSA approval in accordance with the IFR. Accordingly, TSA estimates the total number of respondents to be 2,025 (1,500 armed security officers + 500 aircraft operators + 25 FBOs).

Frequency: For security coordinators, armed security officers, and flightcrew members, the respondents will be required to provide the subject information only once for a CHRC. For passengers and crewmembers onboard aircraft operating into or out of DCA, the respondents will be required to provide the subject information for a name-based threat assessment for each flight into or out of DCA. TSA estimates the total number of responses to be 11,785 per year (500 aircraft operator security coordinator responses + 1,000 flightcrew member responses¹⁹ + 25 FBO security coordinator responses + 1,500 armed security officer responses + 8,760 flight authorization responses).

Annual Burden Estimate: TSA estimates that it will take approximately 1 "hours to submit the required information, including fingerprints, for armed security officers, flightcrew members, and security coordinators, and approximately 1 hour to submit the required information for each flight into or out of DCA, for a total burden of 13,298 hours per year.

TSA is soliciting comments to—

(1) Evaluate whether the information collection requirements are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirements in this IFR by September 19, 2005, and should direct them via fax to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395-5806. Comments to OMB are most useful if received within 30 days of publication of the IFR.

As protection provided by the PRA, as amended, 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 number for this information collection will be published in the **Federal Register** after it has been approved by OMB.

V. Economic Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review (59 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, OMB directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1521-1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

A. Executive Order 12866 Assessment

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including economic significance, which is defined as having an annual effect on the economy of \$100 million. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

The Department concludes that while this action is not economically significant, it does raise novel legal and policy issues under Section 3(f)(4) of the Executive Order. Accordingly, this rulemaking has been reviewed by OMB as significant under Executive Order 12866.

TSA recognizes that the IFR may impose costs on some affected operators, which will stem from developing and implementing new security procedures for all flights into and out of DCA. However, the overall effect of the IFR, to permit these operators to resume DCA operations, may improve their economic condition. In any event, given the current security threat, TSA believes it is necessary to require these enhanced security measures.

Only FBOs at DCA and the gateway airports and general aviation aircraft operators desiring to resume operations to and from DCA will incur expenses. Each individual FBO and aircraft operator will evaluate the costs and benefits to them. FBOs and aircraft operators not realizing a benefit will not participate and will not incur any additional costs. The system-wide costs of this rule are approximately \$496 per flight. Average annual costs of \$8.7 million will be spread over a maximum of 17,520 flights based on the restriction of a total of 48 arrival/departure reservations at DCA per day. The following tables indicate the projected full and discounted costs, as well as the cost per flight.

¹⁹ TSA estimates that each aircraft operator will have 2 flightcrew members who will be required to submit fingerprints under the IFR.

DCA GA COSTS

[2005 \$, millions]

Year	Equipment	LEOs	Threat assessment checks and infrastructure	Crew checks	Security coordinator: paperwork	Total cost
1	\$1.038	\$6.721	\$1.518	\$0.024	\$0.9	\$10.2
2	0.294	6.721	0.612	0.002	0.9	8.5
3	0.294	6.721	0.612	0.002	0.9	8.5
4	0.294	6.721	0.612	0.002	0.9	8.5
5	0.294	6.721	0.612	0.002	0.9	8.5
6	0.294	6.721	0.612	0.002	0.9	8.5
7	0.294	6.721	0.612	0.002	0.9	8.5
8	0.294	6.721	0.612	0.002	0.9	8.5
9	0.294	6.721	0.612	0.002	0.9	8.5
10	0.294	6.721	0.612	0.002	0.9	8.5
Total	3.681	67.210	7.027	0.046	8.8	87.0

DC GA TOTAL COSTS

[Discounted \$, millions]

Year	Total cost	7% factor	7% discounted \$	3% factor	3% discounted \$
1	\$10.20	1.000	\$10.20	1.000	\$10.20
2	8.53	0.935	7.97	0.971	8.28
3	8.53	0.873	7.45	0.943	8.04
4	8.53	0.816	6.96	0.915	7.80
5	8.53	0.763	6.51	0.888	7.57
6	8.53	0.713	6.08	0.863	7.36
7	8.53	0.666	5.68	0.837	7.14
8	8.53	0.623	5.31	0.813	6.93
9	8.53	0.582	4.96	0.789	6.73
10	8.53	0.544	4.64	0.766	6.53
Total	86.96		65.77		76.60

COST/FLIGHT

[2005 \$]

Year	Total cost	Flights	Av cost/flight
1	\$10.20	17,520	\$582.23
2	8.53	17,520	486.81
3	8.53	17,520	486.81
4	8.53	17,520	486.81
5	8.53	17,520	486.81
6	8.53	17,520	486.81
7	8.53	17,520	486.81
8	8.53	17,520	486.81
9	8.53	17,520	486.81
10	8.53	17,520	486.81
Total	86.96	175,200	496.35

Assumptions about unit costs are as follows: 1. *Equipment*

Item	Unit cost	Quantity	Annual cost
ETD ²⁰ Unit Purchase	\$41,500.00	25	\$1,037,500.00
Recurring:			
Maintenance: ETD	11,550.00	25	288,750.00
Misc. (Gloves, Batteries, etc.)			5,000.00
Total: Recurring Maintenance			293,750.00

²⁰ Explosives Trace Detection.

2. Armed Security Officers

Armed security officer hourly costs are computed at the wage rate for Bureau of Labor Statistics (BLS) figures for Police and detectives, public service Sheriffs, bailiffs, and other law enforcement officers, all United States, of \$21.11 grossed up for employer paid

taxes to \$24.55 per hour. The historical data does not reveal how many flights into and out of DCA were round trips, so \$122.38 average fare was allowed for a return trip. Wage costs were computed at an average 8 hour day, per diem calculated at the average Federal rate of \$31. The per-trip costs then average

$350 \times 17,520$ flights = \$6.1 million per year. Training for the armed security officers is assumed at an average of 16 hours/year for 1,500 armed security officers for an additional \$589,000 per year.

3. Threat Assessment Checks and Infrastructure

NAME CHECK POPULATION AND COST

Round-trip flights = (24 flights/day × 365 days)	Number of checks = (4 pas- sengers + 2 crew per flight)	Name based check unit cost	Total annual name based check cost
8,760	52,560	\$2	\$105,120

The number of round-trip flights into and out of DCA is equal to the number of slots per day (4 slots × 12 hours = 48) times the number of days in a year (365)

divided by two, which equals 8,760 round trip flights per year. Assuming that each flight has, on average, four passengers and two crew, there will be

52,560 name based threat assessments per year. The cost for running each check is \$2 which places the annual cost at \$105,120.

NAME BASED THREAT ASSESSMENT COST

[2005 \$, thousands]

Year	Automated flight authorization system	Threat assess- ment system interface	Payment proc- essing and ap- plication setup	System hosting setup costs	Scheduling staff	Name based checks	Total
1	\$713	\$100	\$100	\$100	\$400	\$105	\$1,518
2	107	0	0	0	400	105	612
3	107	0	0	0	400	105	612
4	107	0	0	0	400	105	612
5	107	0	0	0	400	105	612
6	107	0	0	0	400	105	612
7	107	0	0	0	400	105	612
8	107	0	0	0	400	105	612
9	107	0	0	0	400	105	612
10	107	0	0	0	400	105	612
Total	1,676	100	100	100	4,000	1,051	7,027

The Automated Flight Authorization System is estimated to cost \$713,000 in initial development, which will be incurred in the first year. Every year thereafter, TSA estimates the system will cost \$106,961 for annual IT overhead and maintenance. The Threat Assessment Systems Interface, Payment Processing and Application Setup, and System Hosting Setup costs are only incurred in the first year. These reflect

various costs of making the system operational. TSA estimates that it will require 4 FTEs to operate the system. The fully loaded cost of one Federal employee is estimated at \$100,000 per year; therefore the staffing costs will be \$400,000 per year. The ten year total for the name based threat assessments is estimated to be \$7.027 million.

4. Flightcrew Member CHRCs

Although some flightcrew members will have had fingerprint-based CHRCs under other security programs, TSA assumed 500 flightcrew members would need CHRCs in the first year with a 10% per year replacement rate. At \$48 per CHRC this is \$24,000 for the first year and \$2,500 each additional year.

5. Security Coordinators and Paperwork

Item	Loaded hourly rate	Hours	Quantity	Total
Passenger and Crew Manifest and Security Program work	\$50.26	(¹)	17,520	\$880,555.20
Initial Program and Inspection	50.26	8	13	5,227.04

¹ Average 1 hour/flight.

6. Benefits

The primary benefit of this IFR is that it provides access to DCA by general aviation aircraft operations that currently are prohibited. TSA believes that allowing general aviation aircraft operations to resume at DCA will relieve

some of the economic hardship these operators have suffered due to the current restrictions.

TSA believes that the IFR affords these benefits without decreasing the security of the vital government assets in the Washington, DC metropolitan

area. The security provisions contained in this IFR are an integral part of the effort to identify and defeat the threat posed by members of foreign terrorist groups to vital U.S. assets and security. The IFR requires general aviation aircraft operators to adopt and carry out

security measures that are comparable to the security measures required of regularly scheduled, commercial aircraft. TSA believes that the IFR will mitigate the risk that an airborne strike initiated from DCA, located moments away from vital national assets, will occur. TSA recognizes that such an impact may not cause substantial damage to property or a large structure. However, it could potentially result in an undetermined number of fatalities and injuries, as well as reduced tourism. The resulting tragedy would adversely impact the regional economies.

For these reasons, TSA has concluded that the benefits associated with the IFR justify its costs.

B. Regulatory Flexibility Act Assessment

TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Under Executive Order 13272 and the Regulatory Flexibility Act, when an agency publishes a rulemaking without prior notice and opportunity for comment, the Regulatory Flexibility Act requirements do not apply. TSA is adopting this IFR without prior notice and opportunity for public comment. Therefore, no Regulatory Flexibility Act analysis is provided.

C. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of TSA to remove or diminish, to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, TSA has assessed the potential effect of this IFR and has determined that it will impose the same costs on domestic and international entities, and thus will have a neutral trade impact.

D. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, is intended to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement that assesses the effect of any Federal mandate found in a rulemaking action that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Such a mandate is identified as a "significant regulatory action." This IFR is not a significant regulatory action pursuant to the Act.

In addition, the Act does not apply to a regulatory action in which no notice of proposed rulemaking is published, as is the case in this proceeding. Accordingly, it is not necessary to prepare a statement under the Act.

VI. Executive Order 13132, Federalism

Executive Order 13132 requires TSA 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" are 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." Under the Executive Order, TSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

TSA has analyzed this IFR under the principles and criteria of Executive Order 13132, Federalism. TSA has determined that this action will not have a 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. Thus, TSA has determined that the IFR will not have sufficient Federalism implications to warrant the preparation of a Federal Assessment.

VII. Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Review Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4347) and has determined

that this action will not have a significant effect on the human environment.

VIII. Energy Impact Analysis

TSA has assessed the energy impact of this IFR in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94-163, as amended (42 U.S.C. 6362). TSA has tentatively determined that this IFR will not be a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Parts 1520, 1540, and 1562

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Screening, Security, Sensitive security information, Weapons.

The Amendments

■ For the reasons stated in the preamble, the Transportation Security Administration amends parts 1520, 1540, and 1562 of Title 49, Code of Federal Regulations, as follows:

PART 1520—PROTECTION OF SENSITIVE SECURITY INFORMATION

■ 1. The authority citation for part 1520 continues to read as follows:

Authority: 46 U.S.C. 70102-70106, 70117; 49 U.S.C. 114, 40113, 44901-44907, 44913-44914, 44916-44918, 44935-44936, 44942, 46105.

■ 2. In § 1520.3, revise the definition of "Security program" to read as follows:

§ 1520.3 Terms used in this part.

* * * * *

Security program means a program or plan and any amendments, developed for the security of the following, including any comments, instructions, or implementing guidance:

- (1) An airport, aircraft, or aviation cargo operation;
- (2) A fixed base operator;
- (3) A maritime facility, vessel, or port area; or
- (4) A transportation-related automated system or network for information processing, control, and communications.

* * * * *

■ 3. In § 1520.5, revise paragraph (b)(1)(i) and add paragraph (b)(8)(iv) to read as follows:

§ 1520.5 Sensitive security information.

* * * * *

(b) * * *

(1) * * *

(i) Any aircraft operator, airport operator, or fixed base operator security

program, or security contingency plan under this chapter;

* * * * *

(8) * * *

(iv) Any armed security officer procedures issued by TSA under 49 CFR part 1562.

* * * * *

■ 4. In § 1520.7, revise paragraph (a) to read as follows:

§ 1520.7 Covered persons.

(a) Each airport operator, aircraft operator, and fixed base operator subject to the requirements of subchapter C of this chapter, and each armed security officer under subpart B of part 1562.

* * * * *

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

■ 5. The authority citation for part 1540 continues to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

Subpart B—Responsibilities of Passengers and Other Individuals and Persons

■ 6. In § 1540.111, revise paragraphs (a)(3), (b)(2), and (c) to read as follows:

§ 1540.111 Carriage of weapons, explosives, and incendiaries by individuals.

(a) * * *

(3) When the individual is attempting to board or onboard an aircraft for which screening is conducted under §§ 1544.201, 1546.201, or 1562.23 of this chapter.

(b) * * *

(2) An individual authorized to carry a weapon in accordance with §§ 1544.219, 1544.221, 1544.223, 1546.211, or subpart B of part 1562 of this chapter.

* * * * *

(c) *In checked baggage.* A passenger may not transport or offer for transport in checked baggage or in baggage carried in an inaccessible cargo hold under § 1562.23 of this chapter:

(1) Any loaded firearm(s).

(2) Any unloaded firearm(s) unless—

(i) The passenger declares to the aircraft operator, either orally or in writing, before checking the baggage, that the passenger has a firearm in his or her bag and that it is unloaded;

(ii) The firearm is unloaded;

(iii) The firearm is carried in a hard-sided container; and

(iv) The container in which it is

carried is locked, and only the passenger retains the key or combination.

(3) Any unauthorized explosive or incendiary.

* * * * *

■ 7. Revise the title of part 1562 to read as follows:

PART 1562—OPERATIONS IN THE WASHINGTON, DC, METROPOLITAN AREA

■ 8. The authority citation for part 1562 is revised to read as follows:

Authority: 49 U.S.C. 114, 40114, Sec. 823, Pub. L. 108–176, 117 Stat. 2595.

■ 9. Add a new subpart B to read as follows:

Subpart B—Ronald Reagan Washington National Airport: Enhanced Security Procedures for Certain Operations

Sec.

1562.21 Scope, general requirements, and definitions.

1562.23 Aircraft operator and passenger requirements.

1562.25 Fixed base operator requirements.

1562.27 Costs.

1562.29 Armed security officer requirements.

Subpart B—Ronald Reagan Washington National Airport: Enhanced Security Procedures for Certain Operations

§ 1562.21 Scope, general requirements, and definitions.

(a) *Scope.* This subpart applies to aircraft operations into or out of Ronald Reagan Washington National Airport (DCA), fixed base operators located at DCA or gateway airports; individuals designated as a security coordinator by aircraft operators or fixed base operators; and crewmembers, passengers, and armed security officers on aircraft operations subject to this subpart.

(b) *General requirements.* Each person operating an aircraft into or out of DCA must comply with this subpart, except:

(1) Military, law enforcement, and medivac aircraft operations;

(2) Federal and State government aircraft operations operating under an airspace waiver approved by TSA and the Federal Aviation Administration;

(3) All-cargo aircraft operations; and

(4) Passenger aircraft operations conducted under:

(i) A full security program approved by TSA in accordance with 49 CFR 1544.101(a); or

(ii) A foreign air carrier security program approved by TSA in accordance with 49 CFR 1546.101(a) or (b).

(c) *Other security programs.* Each aircraft operator required to comply with this subpart for an aircraft

operation into or out of DCA must also comply with any other TSA-approved security program that covers that operation. If any requirements of the DASSP conflict with the requirements of another TSA-approved security program, the aircraft operation must be conducted in accordance with the requirements of the DASSP.

(d) *Definitions.* For purposes of this subpart, the following definitions apply:

Armed Security Officer Program means the security program approved by TSA, in coordination with the Federal Air Marshal Service, for security officers authorized to carry a firearm under § 1562.29 of this part.

Crewmember means a person assigned to perform duty in an aircraft during flight time. This does not include an armed security officer.

DCA means Ronald Reagan Washington National Airport.

DASSP means the aircraft operator security program (DCA Access Standard Security Program) approved by TSA under this part for aircraft operations into and out of DCA.

FBO means a fixed base operator that has been approved by TSA under this part to serve as a last point of departure for flights into or out of DCA.

FBO Security Program means the security program approved by TSA under this part for FBOs to serve flights into or out of DCA.

Flightcrew member means a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time.

Gateway airport means an airport that has been approved by TSA under this part as a last point of departure for flights into DCA under this part.

Passenger means any person on an aircraft other than a flightcrew member. A “passenger” includes an armed security officer authorized to carry a firearm in accordance with the rule.

§ 1562.23 Aircraft operator and passenger requirements.

(a) *General.* To operate into or out of DCA, an aircraft operator must:

(1) Designate a security coordinator responsible for implementing the DASSP and other security requirements required under this section, and provide TSA with the security coordinator’s contact information and availability in accordance with the DASSP.

(2) Adopt and carry out the DASSP.

(3) Ensure that each crewmember of an aircraft operating into or out of DCA meets the requirements of paragraph (c) of this section.

(4) Apply for and receive a reservation from the Federal Aviation Administration and authorization from

TSA for each flight into and out of DCA in accordance with paragraph (d) of this section.

(5) Comply with the operating requirements in paragraph (e) of this section for each flight into and out of DCA.

(6) Pay any costs and fees required under this part.

(7) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know, and refer all requests for SSI by other persons to TSA.

(8) Comply with any additional security procedures required by TSA through order, Security Directive, or other means.

(b) *Security coordinator.* Each security coordinator designated by an aircraft operator under paragraph (a) of this section:

(1) Must undergo a fingerprint-based criminal history records check that does not disclose that he or she has a disqualifying criminal offense as described in § 1544.229(d) of this chapter. This standard is met if the security coordinator is in compliance with the fingerprint-based criminal history records check requirements of §§ 1542.209, 1544.229, or 1544.230 of this chapter with his or her current employer.

(2) Must submit to TSA his or her:

(i) Legal name, including first, middle, and last; any applicable suffix, and any other names used.

(ii) Current mailing address, including residential address if different than current mailing address.

(iii) Date and place of birth.

(iv) Social security number, (submission is voluntary, although recommended).

(v) Citizenship status and date of naturalization if the individual is a naturalized citizen of the United States.

(vi) Alien registration number, if applicable.

(3) Must successfully complete a TSA security threat assessment.

(4) May, if informed that a disqualifying offense has been disclosed, correct the record in accordance with the procedures set forth in paragraphs (h) and (i) of § 1544.229 of this chapter regarding notification and correction of records.

(c) *Flightcrew member requirements.* Each flightcrew member of an aircraft, as defined in 49 CFR 1540.5, operating into or out of DCA:

(1) Must undergo a fingerprint-based criminal history records check that does not disclose that he or she has a disqualifying criminal offense as

described in § 1544.229(d) of this chapter. This standard is met if the flightcrew member is in compliance with the fingerprint-based criminal history records check requirements of §§ 1542.209, 1544.229, or 1544.230 of this chapter with his or her current employer.

(2) Must not have a record on file with the Federal Aviation Administration of a violation of—

(i) A prohibited area designated under 14 CFR part 73;

(ii) A flight restriction established under 14 CFR 91.141;

(iii) Special security instructions issued under 14 CFR 99.7;

(iv) A restricted area designated under 14 CFR part 73;

(v) Emergency air traffic rules issued under 14 CFR 91.139;

(vi) A temporary flight restriction designated under 14 CFR 91.137, 91.138, or 91.145; or

(vii) An area designated under 14 CFR 91.143.

(3) May, if informed that a disqualifying offense has been disclosed, correct the record in accordance with the procedures set forth in paragraphs (h) and (i) of § 1544.229 of this chapter regarding notification and correction of records.

(d) *Flight authorization requirements.* To receive authorization to operate an aircraft into or out of DCA, an aircraft operator must follow the procedures in this paragraph.

(1) The aircraft operator must apply to the Federal Aviation Administration for a tentative reservation, in a form and manner approved by the Federal Aviation Administration.

(2) The aircraft operator must submit to TSA, in a form and manner approved by TSA, the following information at least 24 hours prior to aircraft departure:

(i) For each passenger and crewmember on the aircraft:

(A) Legal name, including first, middle, and last; any applicable suffix, and any other names used.

(B) Current mailing address, including residential address if different than current mailing address.

(C) Date and place of birth.

(D) Social security number, (submission is voluntary, although recommended).

(E) Citizenship status and date of naturalization if the individual is a naturalized citizen of the United States.

(F) Alien registration number, if applicable.

(ii) The registration number of the aircraft.

(iii) The flight plan.

(iv) Any other information required by TSA.

(3) TSA will conduct a name-based security threat assessment for each passenger and crewmember. If TSA notifies the aircraft operator that a passenger or crewmember may pose a security threat, the aircraft operator must ensure that the passenger or crewmember does not board the aircraft before the aircraft departs out of DCA or out of a gateway airport to DCA.

(4) If TSA approves the flight, TSA will transmit such approval to the Federal Aviation Administration for assignment of a final reservation to operate into or out of DCA. Once the Federal Aviation Administration assigns the final reservation, TSA will notify the aircraft operator.

(5) TSA may, at its discretion, cancel any or all flight approvals at any time without prior notice to the aircraft operator.

(6) TSA may, at its discretion, permit a flight into or out of DCA to deviate from the requirements of this subpart, if TSA finds that such action would not be detrimental to transportation security or the safe operation of the aircraft.

(7) TSA may, at its discretion, require any flight into or out of DCA under this subpart to comply with additional security measures.

(e) *Operating requirements.* Each aircraft operator must:

(1) Ensure that each flight into DCA departs from a gateway airport and makes no intermediate stops before arrival at DCA.

(2) Ensure that each passenger and crewmember on an aircraft operating into or out of DCA has been screened in accordance with the DASSP prior to boarding the aircraft.

(3) Ensure that all accessible property and property in inaccessible cargo holds on an aircraft operating into or out of DCA has been screened in accordance with the DASSP prior to boarding the aircraft.

(4) Ensure that each aircraft operating into or out of DCA has been searched in accordance with the DASSP.

(5) Ensure that each passenger and crewmember on an aircraft operating into or out of DCA provides TSA with a valid government-issued picture identification in accordance with the DASSP.

(6) If the aircraft operating into or out of DCA is equipped with a cockpit door, ensure that the door is closed and locked at all times during the operation of the aircraft to or from DCA, unless Federal Aviation Administration regulations require the door to remain open.

(7) Ensure that each aircraft operating into or out of DCA has onboard at least one armed security officer who meets

the requirements of § 1562.29 of this chapter. This requirement does not apply if—

(i) There is a Federal Air Marshal onboard; or

(ii) The aircraft is being flown without passengers into DCA to pick up passengers, or out of DCA after deplaning all passengers.

(8) Ensure that an aircraft operating into or out of DCA has any Federal Air Marshal onboard, at no cost to the Federal Government, if TSA or the Federal Air Marshal Service so requires.

(9) Notify the National Capital Region Coordination Center prior to departure of the aircraft from DCA or a gateway airport.

(10) Ensure that each aircraft operating into or out of DCA operates under instrument flight rules.

(11) Ensure that each passenger complies with any security measures mandated by TSA.

(12) Ensure that no prohibited items are onboard the aircraft.

(f) *Compliance.* (1) Each aircraft operator must:

(i) Permit TSA to conduct any inspections or tests, including copying records, to determine compliance with this part and the DASSP.

(ii) At the request of TSA, provide evidence of compliance with this part and the DASSP, including copies of records.

(2) Noncompliance with this part or the DASSP may result in the cancellation of an aircraft operator's flight approvals and other remedial or enforcement action, as appropriate.

(g) *Passenger requirements.* Each passenger, including each armed security officer, who boards or attempts to board an aircraft under this section must:

(1) Provide information to the aircraft operator as provided in this section.

(2) Provide to TSA upon request a valid government-issued photo identification.

(3) Comply with security measures as conveyed by the aircraft operator.

(4) Comply with all applicable regulations in this chapter, including § 1540.107 regarding submission to screening and inspection, § 1540.109 regarding prohibition against interference with screening personnel, and § 1540.111 regarding carriage of weapons, explosives, and incendiaries by individuals.

§ 1562.25 Fixed base operator requirements.

(a) *Security program.* Each FBO must adopt and carry out an FBO Security Program.

(b) *Screening and other duties.* Each FBO must—

(1) Designate a security coordinator who meets the requirements in § 1562.23(b) of this part and is responsible for implementing the FBO Security Program and other security requirements required under this section, and provide TSA with the security coordinator's contact information and availability in accordance with the FBO Security Program.

(2) Support the screening of persons and property in accordance with the requirements of this subpart and the FBO Security Program.

(3) Support the search of aircraft in accordance with the requirements of this subpart and the FBO Security Program.

(4) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know, and refer all requests for SSI by other persons to TSA.

(5) Perform any other duties required under the FBO Security Program.

(c) *Compliance.* (1) Each FBO must:

(i) Permit TSA to conduct any inspections or tests, including copying records, to determine compliance with this part and the FBO Security Program.

(ii) At the request of TSA, provide evidence of compliance with this part and the FBO Security Program, including copies of records.

(2) Noncompliance with this part or the FBO Security Program may result in the cancellation of an aircraft operator's flight approvals and other remedial or enforcement action, as appropriate.

§ 1562.27 Costs.

(a) Each aircraft operator must pay a threat assessment fee of \$15 for each passenger and crewmember whose information the aircraft operator submits to TSA in accordance with § 1562.23(d) of this part.

(b) Each aircraft operator must pay to TSA the costs associated with carrying out this subpart, as provided in its DASSP.

(c) All fees and reimbursement must be remitted to TSA in a form and manner approved by TSA.

(d) TSA will not issue any refunds, unless any fees or reimbursement funds were paid in error.

(e) If an aircraft operator does not remit to TSA the fees and reimbursement funds required under this section, TSA may decline to process any requests for authorization from the aircraft operator.

§ 1562.29 Armed security officer requirements.

(a) *General.* Unless otherwise authorized by TSA, each armed security officer must meet the following requirements:

(1) Be qualified to carry a firearm in accordance with paragraph (b) of this section.

(2) Successfully complete a TSA security threat assessment as described in paragraph (c) of this section.

(3) Meet such other requirements as TSA, in coordination with the Federal Air Marshal Service, may establish in the Armed Security Officer Security Program.

(4) Be authorized by TSA, in coordination with the Federal Air Marshal Service, under 49 U.S.C. 44903(d).

(b) *Qualifications.* To be qualified to carry a firearm under this subpart, an individual must meet the requirements in paragraph (1), (2), or (3) of this section, unless otherwise authorized by TSA, in coordination with the Federal Air Marshal Service.

(1) *Active law enforcement officers.* An active law enforcement officer must be an employee of a governmental agency who—

(i) Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law;

(ii) Has statutory powers of arrest;

(iii) Is authorized by the agency to carry a firearm;

(iv) Is not the subject of any disciplinary action by the agency;

(v) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(vi) Is not prohibited by Federal law from receiving a firearm.

(2) *Retired law enforcement officers.* A retired law enforcement officer must be an individual who—

(i) Retired in good standing from service with a public agency as a law enforcement officer, other than for reasons of mental instability;

(ii) Before such retirement, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest;

(iii) Before such retirement, was regularly employed as a law enforcement officer for an aggregate of 15 years or more, or retired from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(iv) Has a non-forfeitable right to benefits under the retirement plan of the agency;

(v) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(vi) Is not prohibited by Federal law from receiving a firearm.

(3) *Other individuals.* Any other individual must—

(i) Meet qualifications established by TSA, in coordination with the Federal Air Marshal Service, in the Armed Security Officer Program;

(ii) Not be under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(iii) Not be prohibited by Federal law from receiving a firearm.

(c) *Threat assessments.* To be authorized under this section, each armed security officer:

(1) Must undergo a fingerprint-based criminal history records check that does not disclose that he or she has a criminal offense that would disqualify him or her from possessing a firearm under 18 U.S.C. 922(g).

(2) May, if informed that a disqualifying offense has been disclosed, correct the record in accordance with the procedures set forth in paragraphs (h) and (i) of § 1544.229 of this chapter regarding notification and correction of records.

(3) Must submit to TSA his or her:

(i) Legal name, including first, middle, and last; any applicable suffix, and any other names used.

(ii) Current mailing address, including residential address if different than current mailing address.

(iii) Date and place of birth.

(iv) Social security number, (submission is voluntary, although recommended).

(v) Citizenship status and date of naturalization if the individual is a naturalized citizen of the United States.

(vi) Alien registration number, if applicable.

(4) Must undergo a threat assessment by TSA prior to receiving authorization under this section and prior to boarding an aircraft operating into or out of DCA as provided in § 1562.23(d)(1) of this part.

(d) *Training.* Each armed security officer onboard an aircraft operating into or out of DCA must:

(1) Have basic law enforcement training acceptable to TSA; and

(2) Successfully complete a TSA-approved training course, developed in coordination with the Federal Air Marshal Service, at the expense of the armed security officer.

(e) *Armed security officer program.* (1) Each armed security officer onboard an aircraft operating into or out of DCA must—

(i) Comply with the Armed Security Officer Program.

(ii) Restrict the distribution, disclosure, and availability of sensitive security information (SSI), as defined in part 1520 of this chapter, to persons with a need to know, and refer all requests for SSI by other persons to TSA.

(2) TSA and the Federal Air Marshal Service may conduct random inspections of armed security officers to ensure compliance with the Armed Security Officer Program.

(f) *Authority to carry firearm.* An armed security officer approved under this section is authorized—

(1) To carry a firearm in accordance with the Armed Security Officer Program on an aircraft operating under a DASSP into or out of DCA; and

(2) To transport a firearm in accordance with the Armed Security Officer Program at any airport as needed to carry out duties under this subpart,

including for travel to and from flights conducted under this subpart.

(g) *Use of force.* Each armed security officer authorized to carry a firearm under this section may use force, including deadly force, in accordance with the Armed Security Officer Program.

(h) *Use of alcohol or intoxicating or hallucinatory drugs or substances.* An armed security officer onboard an aircraft operating into or out of DCA may not consume alcohol or use an intoxicating or hallucinatory drug or substance during the flight and within 8 hours before boarding the aircraft.

(i) *Credential.* (1) *TSA credential.* An armed security officer under this section must carry a credential issued by TSA.

(2) *Inspection of credential.* An armed security officer must present the TSA-issued credential for inspection when requested by an authorized representative of TSA, the Federal Aviation Administration, the Federal Air Marshal Service, the National Transportation Safety Board, any Federal, State, or local law enforcement officer, or any authorized aircraft operator representative.

(3) *Preflight identification to crewmembers.* When carrying a firearm, an armed security officer must identify himself or herself to all crewmembers either personally or through another member of the crew before the flight.

(j) *Suspension or withdrawal of authorization.* At the discretion of TSA, authorization under this subpart and 49 U.S.C. 44903(d) is suspended or withdrawn upon notification by TSA.

Issued in Arlington, Virginia, on July 15, 2005.

Tom Blank,

Acting Deputy Administrator.

[FR Doc. 05-14269 Filed 7-15-05; 3:06 pm]

BILLING CODE 4910-62-P

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Federal Register

Vol. 70, No. 137

Tuesday, July 19, 2005

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Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000****Laws** **741-6000**

Presidential Documents

Executive orders and proclamations **741-6000****The United States Government Manual** **741-6000**

Other Services

Electronic and on-line services (voice) **741-6020**Privacy Act Compilation **741-6064**Public Laws Update Service (numbers, dates, etc.) **741-6043**TTY for the deaf-and-hard-of-hearing **741-6086**

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FEDERAL REGISTER PAGES AND DATE, JULY

37985-38570.....	1
38571-38750.....	5
38751-39172.....	6
39173-39410.....	7
39411-39638.....	8
39639-39904.....	11
39905-40184.....	12
40185-40634.....	13
40635-40878.....	14
40879-41128.....	15
41129-41340.....	18
41341-41604.....	19

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:

12735 (See EO	
13382).....	38567
12938 (Amended by	
EO 13382).....	38567
13094 (See EO	
13382).....	38567
13382.....	38567

Administrative Orders:

Memorandums:

Memorandum of June	
29, 2005.....	39173
Memorandum of April	
21, 2005 (Amended	
by Memorandum of	
July 1, 2005).....	41341
Memorandum of July	
1, 2005.....	41341

Presidential Determinations:

No. 2005-26 of July 4,	
2005.....	40181
No. 2005-27 of July 4,	
2005.....	40183

7 CFR

305.....	41092
318.....	40879
319.....	40879, 41092
946.....	41129
983.....	39905, 40185
4274.....	38571
4280.....	41264
Proposed Rules:	
97.....	40921
319.....	39194
868.....	39199
2902.....	38612

10 CFR

72.....	40879
110.....	37985
625.....	39364
Proposed Rules:	
72.....	40924

12 CFR

201.....	39411
620.....	40635
621.....	40635
650.....	40635
651.....	40635
652.....	40635
653.....	40635
654.....	40635
655.....	40635
Proposed Rules:	
Ch. VII.....	39202, 40924

13 CFR

Proposed Rules:	
106.....	39667

14 CFR

11.....	40156
21.....	40166
23.....	37994
25.....	39908, 39910
36.....	38742
39.....	38573, 38575, 38578,
	38580, 38751, 38753, 38755,
	39412, 39559, 39639, 39642,
	39644, 39647, 39651, 39912,
	40187, 40651, 40656
43.....	40872
71.....	37997, 38740, 39175,
	39914, 39915, 39916, 39917
73.....	38740
91.....	38742, 40168
93.....	39610
97.....	39652
121.....	40156, 40168, 41134
125.....	40168
129.....	40168
382.....	41482

Proposed Rules:

39.....	38625, 38627, 38630,
	38632, 38636, 38817, 38819,
	38821, 38823, 39204, 39433,
	39435, 41350, 41352, 41354
71.....	38053, 38055, 38056,
	38826, 39973

15 CFR

740.....	41094
742.....	41094
743.....	41094
772.....	41094
774.....	41094

Proposed Rules:

303.....	38828
----------	-------

16 CFR

Proposed Rules:

23.....	38834
---------	-------

17 CFR

240.....	40614
270.....	39390

Proposed Rules:

36.....	39672
37.....	39672
38.....	39672
39.....	39672
40.....	39672

18 CFR

35.....	38757
---------	-------

Proposed Rules:

35.....	40941
131.....	40941
154.....	40941
157.....	40941
250.....	40941
281.....	40941

284.....	40941
300.....	40941
341.....	40941
342.....	40943
344.....	40941
346.....	40941
347.....	40941
348.....	40941
375.....	40941
385.....	40941

19 CFR**Proposed Rules:**

101.....	38637
122.....	38637

20 CFR

1.....	41340
30.....	41340
404.....	38582
416.....	41135
646.....	40870

Proposed Rules:

416.....	39689
----------	-------

21 CFR

Ch. I.....	40880
520.....	40880, 41139
522.....	39918
529.....	41139
556.....	39918

Proposed Rules:

Ch. 1.....	41356
310.....	40232
341.....	40232, 40237

22 CFR

126.....	39919
----------	-------

23 CFR**Proposed Rules:**

630.....	39692
----------	-------

25 CFR

124.....	40660
----------	-------

26 CFR

1.....	39653, 39920, 40189, 40661, 40663, 41343
26.....	41140
301.....	40669, 41144
602.....	39920, 40189, 40663

Proposed Rules:

1.....	38057, 39695, 40675
31.....	38057
35.....	40675
54.....	40675
301.....	40675, 41165

27 CFR

9.....	37998, 38002, 38004
--------	---------------------

Proposed Rules:

4.....	38058
--------	-------

28 CFR**Proposed Rules:**

16.....	39696
45.....	39206

29 CFR

4022.....	40881
4044.....	40881

Proposed Rules:

1404.....	39209
1610.....	38060

30 CFR

250.....	41556
----------	-------

Proposed Rules:

934.....	38639
----------	-------

31 CFR

Ch. V.....	38256
------------	-------

32 CFR

321.....	38009
----------	-------

Proposed Rules:

285.....	40249
----------	-------

33 CFR

100.....	38010, 39654, 39656, 40882
110.....	40885
117.....	38593, 38594, 40887
165.....	38013, 38015, 39176, 39923, 40885, 40888, 41343, 41345

Proposed Rules:

100.....	39697
165.....	40944
167.....	38061

34 CFR

230.....	38017
----------	-------

36 CFR

7.....	38759
--------	-------

37 CFR

2.....	38768
7.....	38768
201.....	38022
251.....	38022
252.....	38022
257.....	38022
258.....	39178
259.....	38022

38 CFR**Proposed Rules:**

3.....	39213
--------	-------

40 CFR

51.....	39104, 39413
52.....	38023, 38025, 38028, 38029, 38774, 38776, 39658, 39926, 40193, 40195, 41146
62.....	39927
63.....	38554, 38780, 39426, 39662, 40672

80.....	40889
81.....	38029
85.....	40420
86.....	40420
89.....	40420
90.....	40420
91.....	40420
92.....	40420
94.....	40420
180.....	38780, 38785, 38786, 40196, 40199, 40202, 40899
300.....	38789, 39180
372.....	39931
799.....	39624, 39630
1039.....	40420
1048.....	40420
1051.....	40420
1065.....	40420
1068.....	40420
1506.....	41148

180.....	38780, 38785, 38786, 40196, 40199, 40202, 40899
300.....	38789, 39180

372.....	39931
----------	-------

799.....	39624, 39630
----------	--------------

1039.....	40420
-----------	-------

1048.....	40420
-----------	-------

1051.....	40420
-----------	-------

1065.....	40420
-----------	-------

1068.....	40420
-----------	-------

1506.....	41148
-----------	-------

Proposed Rules:

52.....	38064, 38068, 38071,
---------	----------------------

38073, 38837, 38839, 38840, 39974, 40946, 41166	
55.....	38840
60.....	39870
62.....	39974
63.....	38554, 39441, 39457
80.....	40949
81.....	38073, 39215
85.....	39870
89.....	39870
94.....	39870
155.....	40251
194.....	38642
228.....	41167
261.....	41358
300.....	38845, 39217
1039.....	39870
1065.....	39870
1068.....	39870

41 CFR**Proposed Rules:**

51-2.....	38080
51-3.....	38080
51-4.....	38080

42 CFR

414.....	39022
----------	-------

Proposed Rules:

52.....	40946
80.....	40949
484.....	40788
1001.....	38081

43 CFR**Proposed Rules:**

3000.....	41532
3100.....	41532
3120.....	41532
3130.....	41532
3150.....	41532
3160.....	41532
3200.....	41532
3470.....	41532
3500.....	41532
3600.....	41532
3800.....	41532
3830.....	41532
3833.....	41532
3835.....	41532
3836.....	41532
3860.....	41532
3870.....	41532

44 CFR

64.....	38038, 41347
65.....	40909, 40913
67.....	40955, 40915

Proposed Rules:

67.....	39457, 40951, 40953, 40955, 40956
---------	--------------------------------------

45 CFR

2510.....	39562
2520.....	39562
2521.....	39562
2522.....	39562
2540.....	39562
2550.....	39562

46 CFR**Proposed Rules:**

Ch. I.....	39699, 41261
------------	--------------

47 CFR

1.....	38794, 38795
--------	--------------

15.....	38800
20.....	38794
43.....	38794
63.....	38795
64.....	38795
73.....	39182, 40212, 40213, 40214, 40215
76.....	40216

Proposed Rules:

15.....	38845
22.....	40276
73.....	39217, 40277, 40278
76.....	38848

48 CFR

2101.....	41149
2102.....	41149
2103.....	41149
2104.....	41149
2105.....	41149
2106.....	41149
2109.....	41149
2110.....	41149
2114.....	41149
2115.....	41149
2116.....	41149
2131.....	41149
2132.....	41149
2137.....	41149
2144.....	41149
2146.....	41149
2149.....	41149
2152.....	41149

Proposed Rules:

Ch. II.....	39975
52.....	40279
204.....	39976
222.....	39978
225.....	39980
235.....	39976
249.....	39980
252.....	39976

49 CFR

209.....	38804
213.....	38804
214.....	38804
215.....	38804
216.....	38804
217.....	38804
218.....	38804
219.....	38804
220.....	38804
221.....	38804
222.....	38804
223.....	38804
225.....	38804
228.....	38804
229.....	38804
230.....	38804
231.....	38804
232.....	38804
233.....	38804
234.....	38804
235.....	38804
236.....	38804
238.....	38804
239.....	38804
240.....	38804
241.....	38804
244.....	38804
375.....	39949
571.....	38040, 39959, 40917
573.....	38805
575.....	39970
577.....	38805

1520.....	41586	571.....	40280, 40974	41348	216.....	41187
1540.....	41586	572.....	40281	660.....	223.....	38861, 39231
1562.....	41586			679	224.....	39231
Proposed Rules:		50 CFR		40231, 41163, 41164	229.....	40301
23.....	40973	300.....	41159	Proposed Rules:	600.....	39700
192.....	41174	600.....	40225	17	648.....	41189
193.....	41174	622.....	39187, 41161	41183	660.....	40302, 40305
195.....	41174	648	39190, 39192, 39970,	32.....		
				40108		

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JULY 19, 2005**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Potatoes (Irish) grown in—
Washington; published 7-18-05

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:
Michigan; published 5-20-05

HOMELAND SECURITY DEPARTMENT**Coast Guard**

Regattas and marine parades:
San Francisco Giants
Fireworks Display;
published 6-21-05

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:
Boeing; published 6-14-05
Teledyne Continental
Motors; published 6-14-05

TREASURY DEPARTMENT Internal Revenue Service

Income taxes:
Brokers and barter exchanges; information returns; CFR correction; published 7-19-05

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cotton classing, testing and standards:
Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Grapes grown in California and imported grapes; comments due by 7-25-05; published 5-25-05 [FR 05-10440]

Prunes (dried) produced in—

California; comments due by 7-26-05; published 5-27-05 [FR 05-10469]

Tomatoes grown in—
Florida; comments due by 7-26-05; published 5-27-05 [FR 05-10468]

AGRICULTURE DEPARTMENT**Animal and Plant Health Inspection Service**

Exportation and importation of animals and animal products:

Tuberculosis in cattle and bison; movement without individual tuberculin test; comments due by 7-25-05; published 5-24-05 [FR 05-10308]

Plant-related quarantine, domestic:

Pine shoot beetle; comments due by 7-25-05; published 5-26-05 [FR 05-10551]

AGRICULTURE DEPARTMENT**Commodity Credit Corporation**

Loan and purchase programs:

Conservation Security Program; comments due by 7-25-05; published 3-25-05 [FR 05-05894]

Cottonseed Payment Program; comments due by 7-25-05; published 6-24-05 [FR 05-12485]

AGRICULTURE DEPARTMENT**Food and Nutrition Service**

Child nutrition programs:

Senior Farmers' Market Nutrition Program; comments due by 7-25-05; published 5-26-05 [FR 05-10388]

AGRICULTURE DEPARTMENT**Food Safety and Inspection Service**

Meat and poultry inspection:

Hazard analysis and critical control point (HACCP) system—

Mechanically tenderized beef products; compliance; comments due by 7-25-05; published 5-26-05 [FR 05-10471]

AGRICULTURE DEPARTMENT**Natural Resources Conservation Service**

Loan and purchase programs:

Conservation Security Program; comments due by 7-25-05; published 3-25-05 [FR 05-05894]

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans with Disabilities Act; implementation:

Accessibility guidelines—
Large and small passenger vessels; comments due by 7-28-05; published 3-22-05 [FR 05-05636]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Endangered and threatened species:

Oregon Coast evolutionary significant unit of coho salmon; listing determination; comments due by 7-28-05; published 6-28-05 [FR 05-12350]

Status review—

North American green sturgeon; southern distinct population; comments due by 7-27-05; published 7-6-05 [FR 05-13264]

West Coast Oncorhynchus mykiss; listing determinations; comments due by 7-28-05; published 6-28-05 [FR 05-12348]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Capital assets manufactured in United States; purchase incentive program; comments due by 7-25-05; published 5-24-05 [FR 05-10233]

Pilot Mentor-Protege Program; comments due by 7-25-05; published 5-24-05 [FR 05-10226]

Quality assurance; comments due by 7-25-05; published 5-24-05 [FR 05-10234]

Service contracts and task and delivery orders approval; comments due by 7-25-05; published 5-24-05 [FR 05-10225]

DEFENSE DEPARTMENT**Engineers Corps**

Danger zones and restricted areas:

Parris Island, SC; Marine Corps Recruit Depot; comments due by 7-25-05; published 6-23-05 [FR 05-12461]

Navigation regulations:

Lake Washington Ship Canal, Hiram M. Chittenden Locks, WA; scheduled operational hours; modification procedures; comments due by 7-25-05; published 5-25-05 [FR 05-10432]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—
Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—
Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT**Energy Efficiency and Renewable Energy Office**

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—
Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT**Federal Energy Regulatory Commission**

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

Natural Gas Policy Act; natural gas companies (Natural Gas Act):

Natural gas reporting regulations; modification; comments due by 7-25-05; published 6-10-05 [FR 05-11543]

**ENVIRONMENTAL
PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Washington; comments due by 7-29-05; published 6-29-05 [FR 05-12713]

Air quality implementation plans; approval and promulgation; various States:
Ohio; comments due by 7-27-05; published 6-27-05 [FR 05-12659]

Pennsylvania; comments due by 7-25-05; published 6-24-05 [FR 05-12581]

Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:
Maine; comments due by 7-25-05; published 6-23-05 [FR 05-12453]

Vermont; comments due by 7-25-05; published 6-23-05 [FR 05-12454]

Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:
Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:
Interconnection—
Incumbent local exchange carriers unbundling

obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

Telephone Consumer Protection Act of 1991; implementation—

Interstate telemarketing calls; declaratory ruling petitions; comments due by 7-29-05; published 6-29-05 [FR 05-12466]

Interstate telemarketing calls; declaratory ruling petitions; comments due by 7-29-05; published 6-29-05 [FR 05-12467]

Radio frequency devices:

Digital television receiver tuner requirements; comments due by 7-27-05; published 7-6-05 [FR 05-13029]

**HEALTH AND HUMAN
SERVICES DEPARTMENT
Centers for Medicare &
Medicaid Services**

Medicaid and Medicare:

Hospice care; participation conditions; comments due by 7-26-05; published 5-27-05 [FR 05-09935]

Medicare:

Cost reports; electronic submission; comments due by 7-26-05; published 5-27-05 [FR 05-10570]

**HEALTH AND HUMAN
SERVICES DEPARTMENT
Food and Drug
Administration**

Food for human consumption:

Food labeling—

Dietary noncariogenic carbohydrate sweeteners and dental caries; health claims; comments due by 7-27-05; published 5-13-05 [FR 05-09608]

Salmonella; shell egg producers to implement prevention measures; comments due by 7-25-05; published 6-8-05 [FR 05-11407]

Human cells, tissues, and cellular and tissue-based products; donor screening and testing, and related labeling; comments due by 7-25-05; published 5-25-05 [FR 05-10583]

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal

drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

**HEALTH AND HUMAN
SERVICES DEPARTMENT**

Health care programs; fraud and abuse:

Health Insurance Portability and Accountability Act—
Data collection program; final adverse actions reporting; correction; comments due by 7-25-05; published 6-24-05 [FR 05-12481]

**HEALTH AND HUMAN
SERVICES DEPARTMENT
Inspector General Office,
Health and Human Services
Department**

Health care programs; fraud and abuse:

Health Insurance Portability and Accountability Act—
Data collection program; final adverse actions reporting; correction; comments due by 7-25-05; published 6-24-05 [FR 05-12481]

**HOMELAND SECURITY
DEPARTMENT
Coast Guard**

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:

Virginia; comments due by 7-25-05; published 6-8-05 [FR 05-11397]

Regattas and marine parades:
Pasquotank River, Elizabeth City, NC; marine events; comments due by 7-28-05; published 6-28-05 [FR 05-12730]

Thunder over the Boardwalk; comments due by 7-26-05; published 7-11-05 [FR 05-13576]

**INTERIOR DEPARTMENT
Fish and Wildlife Service**

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments

until further notice; published 9-10-04 [FR 04-20517]

**INTERIOR DEPARTMENT
Surface Mining Reclamation
and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Alaska; comments due by 7-25-05; published 6-23-05 [FR 05-12439]

**NATIONAL CREDIT UNION
ADMINISTRATION**

Credit unions:

Federal credit unions; fidelity bond and insurance coverage; comments due by 7-25-05; published 5-25-05 [FR 05-10380]

**NUCLEAR REGULATORY
COMMISSION**

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

**PERSONNEL MANAGEMENT
OFFICE**

Training:

Reporting requirements; comments due by 7-26-05; published 5-27-05 [FR 05-10641]

**SMALL BUSINESS
ADMINISTRATION**

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

**OFFICE OF UNITED STATES
TRADE REPRESENTATIVE
Trade Representative, Office
of United States**

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

**TRANSPORTATION
DEPARTMENT
Federal Aviation
Administration**

Airworthiness directives:

Airbus; comments due by 7-29-05; published 6-29-05 [FR 05-12839]

Boeing; comments due by 7-29-05; published 6-14-05 [FR 05-11708]

Bombardier; comments due by 7-26-05; published 5-27-05 [FR 05-10536]

Burkhart Grob; comments due by 7-25-05; published 6-21-05 [FR 05-12178]

Fokker; comments due by 7-29-05; published 6-29-05 [FR 05-12838]

Rolls-Royce plc; comments due by 7-26-05; published 5-27-05 [FR 05-10635]

Turbomeca S.A.; comments due by 7-26-05; published 5-27-05 [FR 05-10295]

Airworthiness standards:

Special conditions—

Diamond Aircraft Industries; comments due by 7-28-05; published 6-28-05 [FR 05-12720]

Class E airspace; comments due by 7-25-05; published 6-8-05 [FR 05-11326]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Civil monetary penalties; inflation adjustment; comments due by 7-25-05; published 5-25-05 [FR 05-10366]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Limitations on benefits and contributions under qualified plans; comments due by 7-25-05; published 5-31-05 [FR 05-10268]

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:

USA PATRIOT Act; implementation—

Anti-money laundering programs for dealers in precious metal, stones, or jewels; comments due by 7-25-05;

published 6-9-05 [FR 05-11431]

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 "PLUS" (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.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 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)

Last List July 13, 2005

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